

SENATE BILL REPORT

ESSB 5162

AS PASSED SENATE, MARCH 9, 1993

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

SPONSORS: 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)

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5162 be substituted therefor, and the substitute bill do pass.

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

Staff: Tom McBride (786-7448)

Hearing Dates: February 2, 1993; February 5, 1993

BACKGROUND:

During the past several years, a number of demonstrations and protests have occurred at health care facilities, particularly facilities that perform abortions. Some of these demonstrations have led to criminal arrests and prosecutions. Some have led to civil lawsuits. In some cases restraining orders have been issued against demonstrators by courts.

A 1986 Washington Supreme Court decision upheld the issuance of a permanent injunction against a group who had demonstrated at a health care center. The clinic offered a variety of health care services, including abortion. The injunction prohibited a variety of activities including: (1) picketing, demonstrating or counseling at the center, except at a designated location; (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 Supreme Court concluded 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.

SUMMARY:

Criminal and civil sanctions are imposed for certain activities that interfere with access at a health care facility or that disrupt the normal functioning of the facility. Prohibited activities include willful or reckless behavior that results in such interference or disruption. This includes physically obstructing the free passage of people, making noise that unreasonably disturbs the facility, trespassing on the premises, threatening facility workers or patients, anonymously or repeatedly phoning the facility, or allowing the use of a phone under one's control to be used for such phoning or threatening.

Picketing for the purpose of providing the public with information is not prohibited.

A criminal conviction of these prohibited acts carries a maximum penalty of one year in jail and a \$5,000 fine. Minimum sentences are provided as well: one day in jail and a \$250 fine for a first conviction; seven days in jail and a \$500 fine for a second conviction; and for a third conviction, 30 days in jail and a \$1,000 fine.

Police officers are given authority to arrest persons without a warrant if there is probable cause to believe that they have committed a violation of the act within the previous 24 hours.

A party injured due to a violation of the act may bring a civil lawsuit against the violator. The civil lawsuit is not dependent upon a criminal conviction or a criminal prosecution going forward. It is not necessary to prove actual damages to bring a civil lawsuit. Punitive damages of up to \$500 per day for an individual plaintiff and up to \$5,000 per day for a plaintiff that is a health care facility, plus costs of litigation and attorney fees are authorized. The punitive damages are in addition to any actual damages.

Courts have the authority to grant injunctive relief. The injunctive relief may be effective in all counties, and may be issued without bond.

The prohibitions do not apply to the actions of law enforcement officers or to employees of the owners of a facility, if they are acting within the scope of their employment. The prohibitions do not apply to expressive conduct protected under the state or federal Constitution or to conduct by a party to a labor dispute.

Courts are directed to take all steps reasonably necessary to protect the privacy of patients or health care providers who are parties or witnesses to proceedings. With good cause, the plaintiff may sue using a false name in civil actions.

Criminal justice agencies must release information, including photographs, that would assist a civil litigant, unless the release would jeopardize a criminal investigation.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

The bill is necessary to secure health care access and treatment for individuals. Demonstrations not only deny or impede access to health care, but can endanger individuals receiving care within the facility at the time of the demonstrations. There are no First Amendment constitutional problems with the bill.

TESTIMONY AGAINST:

The legislation is an attempt to deny pro life proponents free speech. It is too broad and would restrict legal behavior. Moral position could be taken on abortion and bill should not pass because it protects an immoral act.

TESTIFIED: Jan Bianchi, NWWLC (pro); Karen Douglas, Gwen Chaplin, Planned Parenthood (pro); Stewart Jay (pro); Pat Shively (pro); Sue Hollis (pro); Jerry Sheehan (pro); Beverly Whipple (pro); Diane Hale (pro); Angel Martel, Theresa Schremp, Ned Dolejsi, Washington Catholic Conference (con); Susan Mischel, Belynda Hobbs, Maxine Carpenter, A Niebergall, Tacoma Stands Up for Life (con)