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HOUSE BILL 1338

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State of Washington

53rd Legislature

1993 Regular Session

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

Read first time 01/25/93. Referred to Committee on Judiciary.

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; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that seeking or  
7 obtaining health care is a fundamental matter of individual privacy  
8 that deserves state protection. The legislature further finds that  
9 health care providers cannot reasonably be expected to render quality  
10 services when third parties create an environment of disruption,  
11 coercion, and disturbance at health care facilities, or when third  
12 parties attempt to interfere with access to such services. The  
13 legislature further finds that certain actions at health care facility  
14 sites have jeopardized the public health and safety by interfering with  
15 access to health care services, by creating an environment of  
16 disruption, coercion, and disturbance, and by interfering with private  
17 decisions to seek or obtain health care.

1        NEW SECTION.    **Sec. 2.**    (1) "Health care facility" means a facility  
2 that provides health care services directly to patients, including but  
3 not limited to, a hospital, clinic, health care provider's office,  
4 health maintenance organization, diagnostic or treatment center,  
5 neuropsychiatric or mental health facility, hospice, or nursing home.

6        (2) "Health care provider" has the same meaning as defined in RCW  
7 7.70.020 (1) and (2), and also means an officer, director, employee, or  
8 agent of a health care facility who sues or testifies regarding matters  
9 within the scope of his or her employment.

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

14        (1) Physically obstructing, impeding, or hindering the free passage  
15 of a person seeking to enter or depart from the facility or from the  
16 common areas of the real property upon which the facility is located;

17        (2) Making noise that unreasonably disturbs the peace within the  
18 facility;

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

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

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

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

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

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

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

1 No portion of the minimum jail sentence specified may be suspended  
2 or deferred. No portion of the minimum fine specified may be suspended  
3 or deferred unless the court finds that the offender is indigent.

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. In a criminal prosecution for a violation of  
21 section 3 of this act, the court shall impose conditions on the  
22 pretrial release of the defendant that will reasonably assure that the  
23 defendant will not engage in further actions that violate section 3 of  
24 this act pending trial.

25 NEW SECTION. Sec. 7. A person or health care facility aggrieved  
26 by the actions prohibited by section 3 of this act may seek civil  
27 damages from those who committed the prohibited acts and those acting  
28 in concert with them. A plaintiff in an action brought under this  
29 chapter shall not recover more than his or her actual damages, costs,  
30 attorneys' fees, and additional sums authorized in section 8 of this  
31 act. Once a plaintiff recovers his or her actual damages, additional  
32 damages shall not be recovered. A person does not have to be  
33 criminally convicted of violating section 3 of this act to be held  
34 civilly liable under this section.

35 NEW SECTION. Sec. 8. In a civil action brought under section 7 of  
36 this act, an aggrieved individual plaintiff shall be entitled to

1 recover, in addition to his or her actual damages, five hundred dollars  
2 for each day that the actions occurred, or five thousand dollars for  
3 each day that the actions occurred if the aggrieved plaintiff is a  
4 health care facility, plus costs of the action and reasonable  
5 attorneys' fees. It is not necessary to prove actual damages to  
6 recover the additional damages, costs, and attorneys' fees.

7 NEW SECTION. **Sec. 9.** Section 3 of this act shall not be  
8 interpreted to apply to the actions of any agent, officer, or employee  
9 of the health care facility, acting within the scope of his or her  
10 agency, office, or employment, nor to the actions of any law  
11 enforcement officer, acting within the scope of his or her agency.

12 NEW SECTION. **Sec. 10.** A court having jurisdiction over a criminal  
13 or civil proceeding under this chapter shall take all steps reasonably  
14 necessary to safeguard the individual privacy and prevent harassment of  
15 a health care patient or health care provider who is a party or witness  
16 in a proceeding, including granting protective orders and orders in  
17 limine. In civil actions brought under this chapter, upon showing of  
18 good cause, the court may permit health care patients to sue  
19 pseudonymously.

20 NEW SECTION. **Sec. 11.** (1) In a criminal prosecution or civil  
21 action brought under this chapter, it is not a defense that a defendant  
22 sought to prevent a greater harm than a violation of section 3 of this  
23 act.

24 (2) This chapter shall not be construed to recognize or create in  
25 any other criminal matter a defense of necessity.

26 **Sec. 12.** RCW 10.97.070 and 1977 ex.s. c 314 s 7 are each amended  
27 to read as follows:

28 (1) Criminal justice agencies may, in their discretion, disclose to  
29 persons who have suffered physical loss, property damage, or injury  
30 compensable through civil action, the identity of persons suspected as  
31 being responsible for such loss, damage, or injury together with such  
32 information as the agency reasonably believes may be of assistance to  
33 the victim in obtaining civil redress. Such disclosure may be made  
34 without regard to whether the suspected offender is an adult or a

1 juvenile, whether charges have or have not been filed, or a prosecuting  
2 authority has declined to file a charge or a charge has been dismissed.

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

9 (3) The disclosure by a criminal justice agency of investigative  
10 information pursuant to subsection (1) of this section shall not  
11 establish a duty to disclose any additional information concerning the  
12 same incident or make any subsequent disclosure of investigative  
13 information, except to the extent an additional disclosure is compelled  
14 by legal process.

15 NEW SECTION. Sec. 13. Nothing in this chapter shall be construed  
16 to limit the right to seek other available criminal or civil remedies.  
17 The remedies provided in this chapter are cumulative, not exclusive.

18 NEW SECTION. Sec. 14. If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 NEW SECTION. Sec. 15. Sections 2 through 4, 6 through 11, and 13  
23 of this act shall constitute a new chapter in Title 9A RCW.

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