
SENATE BILL 5456

State of Washington

67th Legislature

2021 Regular Session

By Senator McCune

1 AN ACT Relating to the crime of swarming; amending RCW 9A.84.010
2 and 9A.84.030; adding a new section to chapter 9A.84 RCW; creating
3 new sections; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the
6 antismarming act.

7 NEW SECTION. **Sec. 2.** Concerning creating the crime of swarming,
8 the legislature finds that in recent years an increasingly common
9 occurrence during public protests or demonstrations has been for
10 crowds of protesters to block or otherwise obstruct or impede the
11 flow of vehicular traffic on public streets and highways. Such
12 obstruction also occurs in parking lots or other private properties,
13 in which crowds of demonstrators will surround an automobile to
14 hamper or prevent its movement. These obstructions are often
15 accompanied by threats to drivers seeking passage through the protest
16 area, and sometimes by physical attacks on automobiles or even on
17 their drivers and passengers. The legislature finds such blockages,
18 especially when accompanied by threats or physical attacks, can be
19 traumatic and frightening to drivers and passengers in the targeted
20 vehicles. Swarming actions can also be dangerous to the protesters

1 involved, as drivers attempt to escape from the protest and in the
2 process may cause bodily injury or even death to the protesters. In
3 the interest of public safety, including the safety of both
4 protesters and drivers, the legislature intends to prevent such
5 actions and prohibit protesters from unlawfully blocking vehicular
6 passage on public roadways or in commercial parking lots and to
7 provide for criminal and civil penalties for violating this act.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 9A.84
9 RCW to read as follows:

10 (1) No person or group of persons, whether acting singly or in
11 concert, may knowingly engage in the practice of swarming a motor
12 vehicle.

13 (2) (a) Swarming is a gross misdemeanor.

14 (b) If the offender has a previous conviction for swarming, the
15 offense is a class C felony.

16 (c) These penalties shall be in addition to the penalty for any
17 other crime or crimes of which the person has been or may be
18 convicted, including without limitation any civil penalties awarded
19 under subsection (3) of this section.

20 (3) (a) All persons proven to have knowingly participated in a
21 swarming shall be liable for any damages that arise from an act of
22 swarming.

23 (b) Conviction of swarming shall constitute prima facie evidence
24 of responsibility for any such damage or injury, but such conviction
25 shall not be necessary to establish proof of liability.

26 (c) The court shall assess damages using joint and several
27 liability among all named persons participating in the same swarming
28 incident, and suit therefore, may be brought against any or all of
29 such named persons, but recovery may be sought from any one or more
30 of them.

31 (d) No defense of contributory negligence shall be permitted in
32 such a lawsuit, nor shall there be permitted any set-off against
33 injuries which might have occurred to the defendants during such
34 incident.

35 (e) Jurisdiction for such lawsuit shall lie in the superior court
36 of the county in which the swarming incident occurred, or the county
37 in which the plaintiff resides, or the county of residence of any of
38 the defendants.

1 (4) (a) A person lawfully operating a motor vehicle on a highway
2 is not liable for civil damages for injuries sustained to persons or
3 property while reasonably attempting to avoid or flee a person who
4 was participating in an act of swarming under this section at the
5 time of the injury.

6 (b) A person shall not be immune from criminal prosecution or
7 civil liability if the actions leading to the injury were willful or
8 wanton.

9 (c) (a) of this subsection shall not apply if the injured person
10 participating in a protest or demonstration was doing so with a valid
11 permit allowing persons to protest or demonstrate on the public
12 street or highway where the injury occurred.

13 (5) (a) "Swarming" means one or more persons who, while
14 participating in a protest or demonstration, whether or not having
15 received a permit therefore, knowingly approach, surround, block,
16 attack, threaten, or otherwise unlawfully impede or attempt to impede
17 the lawful progress of a motor vehicle.

18 (b) "Progress of a motor vehicle" means movement of a motor
19 vehicle, on a public street or highway, which is then open to
20 traffic; or entering or attempting to enter onto or exit from a
21 public street or highway, which is then open to traffic, whether to
22 or from another public street or highway or to or from private
23 property; or on, into, or through private property if such property
24 is a parking lot for a commercial business establishment, or if the
25 owner or any person in lawful possession or control thereof has
26 verbally instructed such persons or in case of an emergency vehicle,
27 uses sirens, bullhorns, or other means, to the persons swarming to
28 permit free vehicular passage.

29 **Sec. 4.** RCW 9A.84.010 and 2013 c 20 s 1 are each amended to read
30 as follows:

31 (1) A person is guilty of the crime of criminal mischief if,
32 acting with three or more other persons, he or she knowingly and
33 unlawfully uses or threatens to use force, or in any way participates
34 in the use of such force, against any other person or against
35 property.

36 (2) (a) Except as provided in (b) of this subsection, the crime of
37 criminal mischief is a gross misdemeanor.

38 (b) The crime of criminal mischief is a class C felony if the
39 actor is armed with a deadly weapon.

1 (3) (a) A person lawfully operating a motor vehicle on a highway
2 is not liable for civil damages for injuries sustained to persons or
3 property while reasonably attempting to avoid or flee a person who
4 was violating this section.

5 (b) A person shall not be immune from criminal prosecution or
6 civil liability if the actions leading to the injury were willful or
7 wanton.

8 (c) (a) of this subsection shall not apply if the injured person
9 participating in a protest or demonstration was doing so with a valid
10 permit allowing persons to protest or demonstrate on the public
11 street or highway where the injury occurred.

12 **Sec. 5.** RCW 9A.84.030 and 2007 c 2 s 1 are each amended to read
13 as follows:

14 (1) A person is guilty of disorderly conduct if the person:

15 (a) Uses abusive language and thereby intentionally creates a
16 risk of assault;

17 (b) Intentionally disrupts any lawful assembly or meeting of
18 persons without lawful authority;

19 (c) Intentionally obstructs vehicular or pedestrian traffic
20 without lawful authority; or

21 (d) (i) Intentionally engages in fighting or in tumultuous conduct
22 or makes unreasonable noise, within five hundred feet of:

23 (A) The location where a funeral or burial is being performed;

24 (B) A funeral home during the viewing of a deceased person;

25 (C) A funeral procession, if the person described in this
26 subsection (1) (d) knows that the funeral procession is taking place;
27 or

28 (D) A building in which a funeral or memorial service is being
29 conducted; and

30 (ii) Knows that the activity adversely affects the funeral,
31 burial, viewing, funeral procession, or memorial service.

32 (2) Disorderly conduct is a misdemeanor.

33 (3) (a) A person lawfully operating a motor vehicle on a highway
34 is not liable for civil damages for injuries sustained to persons or
35 property while reasonably attempting to avoid or flee a person who
36 was violating subsection (1) (c) of this section or was participating
37 in an act of swarming under section 3 of this act at the time of the
38 injury.

1 (b) A person shall not be immune from criminal prosecution or
2 civil liability if the actions leading to the injury were willful or
3 wanton.

4 (c) (a) of this subsection shall not apply if the injured person
5 participating in a protest or demonstration was doing so with a valid
6 permit allowing persons to protest or demonstrate on the public
7 street or highway where the injury occurred.

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