

SENATE BILL REPORT

ESHB 2126

As Reported By Senate Committee On:
Judiciary, March 30, 2005

Title: An act relating to providing accommodations to dependent persons who are victims and witnesses.

Brief Description: Providing accommodations to dependent persons who are victims and witnesses.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Lantz, Kenney, Kessler, Rodne, Linville, Hankins, Grant, Takko, Newhouse, Williams, Flannigan, Sells, Ormsby, Chase and Serben).

Brief History: Passed House: 3/11/05, 93-0.

Committee Activity: Judiciary: 3/24/05, 3/30/05 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin and Rasmussen.

Staff: Aldo Melchiori (786-7439)

Background: There are various statutes making it a crime to mistreat a dependent person. A "dependent person" is defined in the criminal mistreatment laws as a person who, because of physical or mental disability or because of extreme advanced age, is dependent upon another for food, water, shelter, clothing, and medically necessary health care. A vulnerable adult, resident of a nursing home, or resident of an adult family home is presumed to be a dependent person. A person is a "vulnerable adult" if the person: (1) is 60 years old or older who has the functional, mental, or physical inability to care for him or herself; (2) is found incapacitated under the guardianship laws; (3) has a developmental disability; (4) is admitted to any residential care facility that is required to be licensed by the state; or (5) is receiving services from home health, hospice, or home care agencies, or an individual provider.

In 1981, the Legislature enacted statutes establishing rights for victims and witnesses of crimes. Those rights address issues of keeping the victim informed and making it easier for the victim to participate in court proceedings. In 1985, the Legislature enacted similar statutes establishing rights for child victims and witnesses.

Court rules and statutes allow the taking of a witness's deposition in criminal trials. By court rule, upon a showing that the witness may be unable to attend a hearing or refuses to discuss the case with counsel, the court may allow a deposition if the witness's testimony is material and necessary to prevent a failure of justice. A deposition may not be used against a defendant who has not had notice of and an opportunity to participate in or be present at the deposition.

Summary of Amended Bill: A new chapter is created to: (1) provide rights to dependent persons who are victims and witnesses of crimes; and (2) allow for videotape depositions of dependent persons.

Rights are enumerated for dependent persons who are victims or witnesses of crimes. The rights are the same as those listed for victims and witnesses and child victims and witnesses. The rights listed are not to be construed as creating substantive rights and duties, and each case is subject to the discretion of law enforcement, the prosecutor, or the judge.

Prior to trial, the court may allow the prosecutor or defense to take a videotape deposition of the dependent person if it is likely that the person will be unavailable to testify at trial. The court's finding of likely unavailability must be based upon, at a minimum, recommendations from the person's doctor or anybody else with direct contact with the dependent person and based on the dependent person's specific behavior. The party seeking the deposition must provide reasonable written notice to the other party, who must have the opportunity to be present and cross-examine the person. The deposition may be used at trial if the dependent person is unavailable and the other party had notice of and an opportunity to be present at the deposition.

Failure to provide notice of the rights or to assure these rights to the dependent person do not result in civil liability if the failure was in good faith.

Amended Bill Compared to Original Bill: The provisions allowing, and providing procedures for, closed circuit testimony are removed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Sometimes court procedures tend to re-victimize vulnerable people. This bill will help vulnerable victims get a fair shake in court. If people can't participate in the judicial system freely, they are denied justice. These are just reasonable accommodations for particularly vulnerable people. This is a first step to help stop the serial victimization of the elderly and people with disabilities. The defendant's constitutional right to confront witnesses is protected by the court procedures.

Testimony Against: None.

Who Testified: PRO: Seth Dawson, Washington Protection and Advocacy System; Phil Jordan, Washington Protection and Advocacy System; Tom McBride, WAPA.