
HOUSE BILL 2126

State of Washington

59th Legislature

2005 Regular Session

By Representatives Lantz, Kenney, Kessler, Rodne, Linville, Hankins, Grant, Takko, Newhouse, Williams, Flannigan, Sells, Ormsby, Chase and Serben

Read first time 02/18/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to providing accommodations to dependent persons
2 who are victims and witnesses; amending RCW 5.28.030; and adding a new
3 chapter to Title 7 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that it is
6 important that dependent persons who are witnesses and victims of crime
7 cooperate with law enforcement and prosecutorial agencies and that
8 their assistance contributes to state and local enforcement efforts and
9 the general effectiveness of the criminal justice system. The
10 legislature finds that the state has an interest in making it possible
11 for courts to adequately and fairly conduct cases involving dependent
12 persons who are victims of crimes. Therefore, it is the intent of the
13 legislature, by means of this chapter, to insure that all dependent
14 persons who are victims and witnesses of crime are treated with
15 sensitivity, courtesy, and special care and that their rights be
16 protected by law enforcement agencies, prosecutors, and judges in a
17 manner no less vigorous than the protection afforded to other victims,
18 witnesses, and criminal defendants.

1 NEW SECTION. **Sec. 2.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1) "Crime" means an act punishable as a felony, gross misdemeanor,
5 or misdemeanor under the laws of this state or equivalent federal or
6 local law.

7 (2) "Dependent person" has the same meaning as that term is defined
8 in RCW 9A.42.010.

9 (3) "Victim" means a living person against whom a crime has been
10 committed.

11 (4) "Witness" means a person who has been or is expected to be
12 summoned to testify for the prosecution in a criminal action, or who by
13 reason of having relevant information is subject to call or likely to
14 be called as a witness for the prosecution, whether or not an action or
15 proceeding has been commenced.

16 (5) "Family member" means a person who is not accused of a crime
17 and who is an adult child, adult sibling, spouse, parent, or legal
18 guardian of the dependent person.

19 (6) "Advocate" means any person not accused of a crime, including
20 a family member approved by the witness or victim, who provides support
21 to a dependent person during any legal proceeding.

22 (7) "Court proceedings" means any court proceeding conducted during
23 the course of the prosecution of a crime committed against a dependent
24 person, including pretrial hearings, trial, sentencing, or appellate
25 proceedings.

26 (8) "Identifying information" means the dependent person's name,
27 address, location, and photograph, and in cases in which the dependent
28 person is a relative of the alleged perpetrator, identification of the
29 relationship between the dependent person and the alleged perpetrator.

30 (9) "Crime victim/witness program" means any crime victim and
31 witness program of a county or local law enforcement agency or
32 prosecutor's office, any rape crisis center's sexual assault victim
33 advocacy program as provided in chapter 70.125 RCW, any domestic
34 violence program's legal and community advocate program for domestic
35 violence victims as provided in chapter 70.123 RCW, or any other crime
36 victim advocacy program which provides trained advocates to assist
37 crime victims during the investigation and prosecution of the crime.

1 NEW SECTION. **Sec. 3.** In addition to the rights of victims and
2 witnesses provided for in RCW 7.69.030, there shall be every reasonable
3 effort made by law enforcement agencies, prosecutors, and judges to
4 assure that dependent persons who are victims or witnesses are afforded
5 the rights enumerated in this section. The enumeration of rights under
6 this chapter shall not be construed to create substantive rights and
7 duties, and the application of an enumerated right in an individual
8 case is subject to the discretion of the law enforcement agency,
9 prosecutor, or judge. Dependent persons who are victims or witnesses
10 in the criminal justice system have the following rights, which apply
11 to any criminal court or juvenile court proceeding:

12 (1) To have explained in language easily understood by the
13 dependent person, all legal proceedings and police investigations in
14 which the dependent person may be involved.

15 (2) With respect to a dependent person who is a victim of a sex or
16 violent crime, to have a crime victim advocate from a crime
17 victim/witness program, or any other advocate of the victim's choosing,
18 present at any prosecutorial or defense interviews with the dependent
19 person. This subsection applies unless it creates undue hardship and
20 if the presence of the crime victim advocate or other advocate does not
21 cause any unnecessary delay in the investigation or prosecution of the
22 case. The role of the crime victim advocate or other advocate is to
23 provide emotional support to the dependent person and to promote the
24 dependent person's feelings of security and safety.

25 (3) To be provided, whenever possible, a secure waiting area during
26 court proceedings and to have an advocate or support person remain with
27 the dependent person prior to and during any court proceedings.

28 (4) To not have the dependent person's identifying information
29 disclosed by any law enforcement agency, prosecutor's office, or state
30 agency without the permission of the dependent person or his or her
31 legal guardian, if applicable, to anyone except another law enforcement
32 agency, prosecutor, defense counsel, or private or governmental agency
33 that provides services to the dependent person if such disclosure will
34 harm the dependent person's reputation. If identifying information
35 that would be harmful to the dependent person's reputation is disclosed
36 to a party other than another law enforcement agency, prosecutor's
37 office, or state agency, the disclosing party shall request a written

1 agreement by the recipient of the information stating that the
2 recipient will not further disseminate the information without the
3 dependent person's written consent.

4 (5) To allow an advocate to make recommendations to the prosecuting
5 attorney about the ability of the dependent person to cooperate with
6 prosecution and the potential effect of the proceedings on the
7 dependent person.

8 (6) To allow an advocate to provide information to the court
9 concerning the dependent person's ability to understand the nature of
10 the proceedings.

11 (7) To be provided information or appropriate referrals to social
12 service agencies to assist the dependent person with the emotional
13 impact of the crime, the subsequent investigation, and judicial
14 proceedings in which the dependent person is involved.

15 (8) To allow an advocate to be present in court while the dependent
16 person testifies in order to provide emotional support to the dependent
17 person.

18 (9) To provide information to the court as to the need for the
19 presence of other supportive persons at the court proceedings while the
20 dependent person testifies in order to promote the dependent person's
21 feelings of security and safety.

22 (10) To allow law enforcement agencies the opportunity to enlist
23 the assistance of other professional personnel such as victim advocates
24 or prosecutorial staff trained in the interviewing of the dependent
25 person.

26 (11) With respect to a dependent person who is a victim of a
27 violent or sex crime, to receive either directly or through the
28 dependent person's legal guardian, if applicable, at the time of
29 reporting the crime to law enforcement officials, a written statement
30 of the rights of dependent persons as provided in this chapter. The
31 statement may be paraphrased to make it more easily understood. The
32 written statement shall include the name, address, and telephone number
33 of a county or local crime victim/witness program, if such a crime
34 victim/witness program exists in the county.

35 NEW SECTION. **Sec. 4.** To assist in ascertaining the truth and
36 securing fairness and efficiency during criminal proceedings in which
37 a dependent person is a victim or witness, the court may:

1 (1) Allow the prosecutor to ask leading questions of a dependent
2 person when necessary to develop the person's testimony;

3 (2) Exercise reasonable control over a defendant's cross-
4 examination of a dependent person to protect the dependent person from
5 confusion;

6 (3) Instruct the jury that a dependent person is neither more nor
7 less believable than any other witness;

8 (4) Provide appropriate accommodations, including but not limited
9 to frequent recesses or reducing the formality in the courtroom, to a
10 dependent person to assist the dependent person in effectively
11 testifying;

12 (5) As provided in RCW 5.28.030, vary the manner in which the oath
13 is given to a dependent person before testifying if administering the
14 formal oath may cause confusion;

15 (6) Admit evidence of a defendant's character if the dependent
16 person is the victim of the crime and the defendant has previously
17 committed crimes against other dependent persons; and

18 (7) Postpone the court proceedings for one court day to accommodate
19 the special physical, mental, or emotional needs of the dependent
20 person.

21 NEW SECTION. **Sec. 5.** (1) The prosecutor may file a motion with
22 the court at any time prior to commencement of the trial for an order
23 authorizing the taking of a video tape deposition of the dependent
24 person's testimony.

25 (2) The court may grant the motion if the prosecutor shows that it
26 is likely that the dependent person will be unavailable to testify at
27 a subsequent trial. The court's finding shall be based upon, at a
28 minimum, recommendations from the dependent person's physician or any
29 other person having direct contact with the dependent person and whose
30 recommendations are based on specific behavioral indicators exhibited
31 by the dependent person.

32 (3) The prosecutor shall provide reasonable written notice to the
33 defendant of the motion and order, if granted, pursuant to superior
34 court criminal rules for depositions.

35 (4) The defendant shall have an opportunity to be present at the
36 deposition and to cross-examine the dependent person.

1 (5) Under circumstances permitted by the rules of evidence, the
2 deposition may be introduced as evidence in a subsequent proceeding if
3 the dependent person is unavailable at trial and the defendant had
4 notice of and an opportunity to participate in the taking of the
5 deposition.

6 NEW SECTION. **Sec. 6.** (1) On motion of the prosecuting attorney in
7 a criminal proceeding, the court may order that a dependent person may
8 testify in a room outside the presence of the defendant or the jury, or
9 both, while one-way closed circuit television equipment simultaneously
10 projects the dependent person's testimony into another room so the
11 defendant or the jury, or both, can watch and hear the dependent person
12 testify if:

13 (a) The testimony is taken during the court proceeding;

14 (b) The court finds by substantial evidence, in a hearing conducted
15 outside the presence of the jury, that requiring the dependent person
16 to testify in the presence of the defendant or the jury, or both, will
17 cause the dependent person to suffer serious emotional or mental
18 distress that will prevent the dependent person from reasonably
19 communicating at the trial or that the dependent person will suffer
20 emotional or mental distress from testifying in the presence of the
21 defendant or the jury, or both. If the defendant is excluded from the
22 presence of the dependent person, the jury must also be excluded. If
23 the dependent person is able to testify in the presence of the
24 defendant but not the jury, the jury shall be excluded from the room
25 and the defendant shall remain in the room with the dependent person;

26 (c) The court finds that the prosecutor has made all reasonable
27 efforts to prepare the dependent person for testifying, including
28 informing the dependent person about community counseling services,
29 giving court tours, and explaining the trial process. If the
30 prosecutor fails to demonstrate that preparations were implemented or
31 the prosecutor in good faith attempted to implement them, the court
32 shall deny the motion;

33 (d) The court balances the strength of the state's case without the
34 testimony of the dependent person against the defendant's
35 constitutional rights and the degree of infringement of the closed-
36 circuit television procedure on those rights;

1 (e) The court finds that no less restrictive method of obtaining
2 the testimony exists that can adequately protect the dependent person
3 from the serious emotional or mental distress;

4 (f) When the court allows the dependent person to testify outside
5 the presence of the defendant, the defendant can communicate constantly
6 with the defense attorney by electronic transmission and be granted
7 reasonable court recesses during the dependent person's testimony for
8 person-to-person consultation with the defense attorney;

9 (g) The court can communicate with the attorneys by an audio system
10 so that the court can rule on objections and otherwise control the
11 proceedings;

12 (h) All parties in the room with the dependent person are on camera
13 and can be viewed by all other parties. If viewing all participants is
14 not possible, the court shall describe for the viewers the location of
15 the prosecutor, defense attorney, and other participants in relation to
16 the dependent person;

17 (i) The court finds that the television equipment is capable of
18 making an accurate reproduction and the operator of the equipment is
19 competent to operate the equipment; and

20 (j) The court imposes reasonable guidelines upon the parties for
21 conducting the filming to avoid trauma to the dependent person or abuse
22 of the procedure for tactical advantage.

23 (2) The prosecutor, defense attorney, and a neutral and trained
24 victim's advocate, if any, shall always be in the room where the
25 dependent person is testifying.

26 (3) During the hearing conducted under subsection (1) of this
27 section to determine whether the dependent person may testify outside
28 the presence of the defendant or the jury, or both, the court may
29 conduct the observation and examination of the dependent person outside
30 the presence of the defendant if:

31 (a) The prosecutor alleges and the court concurs that the dependent
32 person will be unable to testify in front of the defendant or will
33 suffer severe emotional or mental distress if forced to testify in
34 front of the defendant;

35 (b) The defendant can observe and hear the dependent person by
36 closed-circuit television;

37 (c) The defendant can communicate constantly with the defense
38 attorney during the examination of the dependent person by electronic

1 transmission and be granted reasonable court recesses during the
2 dependent person's examination for person-to-person consultation with
3 the defense attorney; and

4 (d) The court finds the closed-circuit television is capable of
5 making an accurate reproduction and the operator of the equipment is
6 competent to operate the equipment. Whenever possible, all the parties
7 in the room with the dependent person shall be on camera so that the
8 viewers can see all the parties. If viewing all participants is not
9 possible, then the court shall describe for the viewers the location of
10 the prosecutor, defense attorney, and other participants in relation to
11 the dependent person.

12 (4) The court shall make particularized findings on the record
13 articulating the factors upon which the court based its decision to
14 allow the dependent person to testify via closed-circuit television
15 pursuant to this section. The factors the court may consider include,
16 but are not limited to, a consideration of the dependent person's age,
17 physical health, emotional stability, expressions of fear made by the
18 dependent person regarding testifying in open court or in front of the
19 defendant, the relationship of the defendant to the dependent person,
20 and the court's observations of the dependent person's inability to
21 reasonably communicate in front of the defendant or in open court. The
22 court's findings shall identify the impact the factors have upon the
23 dependent person's ability to testify in front of the jury or the
24 defendant, or both, and the specific nature of the emotional or mental
25 trauma the dependent person would suffer. The court shall determine
26 whether the source of the trauma is the presence of the defendant, the
27 jury, or both, and shall limit the use of the closed-circuit television
28 accordingly.

29 (5) This section does not apply if the defendant is an attorney pro
30 se unless the defendant has a court-appointed attorney assisting the
31 defendant in the defense.

32 (6) This section may not preclude the presence of both the victim
33 and the defendant in the courtroom together for purposes of
34 establishing or challenging the identification of the defendant when
35 identification is a legitimate issue in the proceeding.

36 (7) All recorded tapes of testimony produced by closed-circuit
37 television equipment shall be subject to any protective order of the

1 court for the purpose of protecting the privacy of the dependent
2 person.

3 (8) Nothing in this section creates a right of the dependent person
4 to a closed-circuit television procedure in lieu of testifying in open
5 court.

6 (9) The state shall bear the costs of the closed-circuit television
7 procedure.

8 NEW SECTION. **Sec. 7.** (1) The failure to provide notice to a
9 dependent person of the rights enumerated in this chapter or the
10 failure to provide the rights enumerated shall not result in civil
11 liability so long as the failure was in good faith.

12 (2) Nothing in this chapter shall be construed to limit a party's
13 ability to bring an action, including an action for damages, based on
14 rights conferred by other state or federal law.

15 **Sec. 8.** RCW 5.28.030 and 2 H. C. s 1695 are each amended to read
16 as follows:

17 (1) Whenever the court or officer before which a person is offered
18 as a witness is satisfied that he has a peculiar mode of swearing
19 connected with or in addition to the usual form of administration,
20 which, in witness' opinion, is more solemn or obligatory, the court or
21 officer may, in its discretion, adopt that mode.

22 (2) Whenever a dependent person, as defined in RCW 9A.42.010, is
23 offered as a witness and the court finds that varying the form and
24 administration of the oath would avoid confusion for the dependent
25 person, the court may vary the oath to be more easily understood by the
26 dependent person while still conveying the solemn and obligatory nature
27 of the oath.

28 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act constitute
29 a new chapter in Title 7 RCW.

30 NEW SECTION. **Sec. 10.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.

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