

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2126

59th Legislature
2005 Regular Session

Passed by the House April 19, 2005
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 12, 2005
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2126** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2126

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

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

READ FIRST TIME 03/03/05.

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

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

4 NEW SECTION. **Sec. 1.** The legislature recognizes that it is
5 important that dependent persons who are witnesses and victims of crime
6 cooperate with law enforcement and prosecutorial agencies and that
7 their assistance contributes to state and local enforcement efforts and
8 the general effectiveness of the criminal justice system. The
9 legislature finds that the state has an interest in making it possible
10 for courts to adequately and fairly conduct cases involving dependent
11 persons who are victims of crimes. Therefore, it is the intent of the
12 legislature, by means of this chapter, to insure that all dependent
13 persons who are victims and witnesses of crime are treated with
14 sensitivity, courtesy, and special care and that their rights be
15 protected by law enforcement agencies, prosecutors, and judges in a
16 manner no less vigorous than the protection afforded to other victims,
17 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 or defense in a criminal
13 action, or who by reason of having relevant information is subject to
14 call or likely to be called as a witness, 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, in consultation
21 with his or her guardian if applicable, who provides support to a
22 dependent person during any legal proceeding.

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

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

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

1 NEW SECTION. **Sec. 3.** (1) 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 (a) 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 (b) 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 (c) 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 (d) To allow an advocate to make recommendations to the prosecuting
29 attorney about the ability of the dependent person to cooperate with
30 prosecution and the potential effect of the proceedings on the
31 dependent person.

32 (e) To allow an advocate to provide information to the court
33 concerning the dependent person's ability to understand the nature of
34 the proceedings.

35 (f) To be provided information or appropriate referrals to social
36 service agencies to assist the dependent person with the emotional
37 impact of the crime, the subsequent investigation, and judicial
38 proceedings in which the dependent person is involved.

1 (g) To allow an advocate to be present in court while the dependent
2 person testifies in order to provide emotional support to the dependent
3 person.

4 (h) To provide information to the court as to the need for the
5 presence of other supportive persons at the court proceedings while the
6 dependent person testifies in order to promote the dependent person's
7 feelings of security and safety.

8 (i) To allow law enforcement agencies the opportunity to enlist the
9 assistance of other professional personnel such as victim advocates or
10 prosecutorial staff trained in the interviewing of the dependent
11 person.

12 (j) With respect to a dependent person who is a victim of a violent
13 or sex crime, to receive either directly or through the dependent
14 person's legal guardian, if applicable, at the time of reporting the
15 crime to law enforcement officials, a written statement of the rights
16 of dependent persons as provided in this chapter. The statement may be
17 paraphrased to make it more easily understood. The written statement
18 shall include the name, address, and telephone number of a county or
19 local crime victim/witness program, if such a crime victim/witness
20 program exists in the county.

21 (2) Any party may request a preliminary hearing for the purpose of
22 establishing accommodations for the dependent person consistent with,
23 but not limited to, the rights enumerated in this section.

24 NEW SECTION. **Sec. 4.** (1) The prosecutor or defense may file a
25 motion with the court at any time prior to commencement of the trial
26 for an order authorizing the taking of a video tape deposition for the
27 purpose of preserving the direct testimony of the moving party's
28 witness if that witness is a dependent person.

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

36 (3) The moving party shall provide reasonable written notice to the

1 other party of the motion and order, if granted, pursuant to superior
2 court criminal rules for depositions.

3 (4) Both parties shall have an opportunity to be present at the
4 deposition and the nonmoving party shall have the opportunity to cross-
5 examine the dependent person.

6 (5) Under circumstances permitted by the rules of evidence, the
7 deposition may be introduced as evidence in a subsequent proceeding if
8 the dependent person is unavailable at trial and both the prosecutor
9 and the defendant had notice of and an opportunity to participate in
10 the taking of the deposition.

11 NEW SECTION. **Sec. 5.** (1) The failure to provide notice to a
12 dependent person of the rights enumerated in this chapter or the
13 failure to provide the rights enumerated shall not result in civil
14 liability so long as the failure was in good faith.

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

18 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute
19 a new chapter in Title 7 RCW.

20 NEW SECTION. **Sec. 7.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

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