

SENATE BILL REPORT

SSB 6099

As Passed Senate, June 24, 2015

Title: An act relating to appointing a representative for a crime victim in certain circumstances.

Brief Description: Appointing a representative for a crime victim in certain circumstances.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden, O'Ban and Conway).

Brief History:

Committee Activity: Law & Justice: 5/12/15, 6/17/15 [DPS].

Second Special Session: Passed Senate: 6/24/15, 44-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6099 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles and Roach.

Staff: Tim Ford (786-7423)

Background: The Washington state constitution and laws grant crime victims basic and fundamental rights. The victim has a right to attend the criminal trial and related court proceedings, and to make a statement at sentencing or any proceeding where the defendant's release is considered. If the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights.

In 1978 Arlene Roberts was found dead in her home. She was eighty years old. The cause of death was asphyxiation by strangulation. In 2010 detective Scott Tompkins reviewed the case files and matched fingerprints from the crime scene to Ronald Wayne MacDonald. After the trial began, the prosecutor agreed to reduce the charge from first degree felony murder to second degree manslaughter and also recommend a five-year suspended sentence in exchange for an *Alford* plea. Ronald Wayne MacDonald agreed and the plea was entered. An *Alford* plea is similar to a guilty plea in that the defendant and prosecutor reach agreement usually resulting in a criminal conviction that leads to sentencing. However, in an

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Alford plea the defendant does not admit guilt but concedes that a jury would likely convict on the strength of the evidence.

The victim had no estate or surviving family to speak on her behalf. At sentencing, Detective Thompson spoke as the representative of the victim and asked the court to impose the maximum sentence. MacDonald objected to the testimony but the trial court allowed the testimony. The trial court imposed the maximum sentence giving MacDonald sixty months in a prison. MacDonald filed a motion to withdraw his guilty plea which was denied. On appeal, in 2015 the Washington Supreme Court reversed and remanded to allow MacDonald to withdraw his plea and face trial, or to seek specific performance of the plea agreement. The basis of the Supreme Court holding is that constitutional due process precludes an investigating officer from undermining or breaching a plea agreement between the state and the defendant.

Summary of Substitute Bill: At a sentencing hearing, if a crime victim is deceased and has no estate or surviving family or any other representative, a prosecuting attorney may appoint a community based advocate or an investigative law enforcement officer to serve as a representative of the victim. A community based advocate or law enforcement officer appointed as a representative of the victim may make a recommendation for a sentence different than that provided in a plea agreement.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on August 1, 2015.

Staff Summary of Public Testimony on Recommended Substitute: PRO: An 80-year-old woman was strangled to death. She left no family or other representatives who could testify on her behalf at the sentencing, which is authorized under our state constitution. The defendant was caught and pled guilty. The recommendation by the prosecutor was an 18-month sentence. The investigator, Detective Tompkins was permitted to testify as the victims advocate due to the circumstances. The trial court exercised its discretion to allow that testimony. The trial court imposed the maximum sentence of 5 years. The trial court judge is not bound by the plea agreement and that is explained to the defendant. Later the state Supreme Court in a 6-3 decision held that the investigating officer was functioning as a substantial arm of the prosecution and should not have been permitted to advocate against the plea bargain. In the dissent, Justice Yu, joined by Justice Gonzales and Stephens, stated that with no family, friends, or estate to speak, Detective Tompkins was the only person familiar with the horrific reality of the victim's death. In the extremely narrow circumstances where the victim is deceased and has no estate or surviving family or other representative, Justice Yu held that it is permissible for an investigating officer to fill the role of testifying on behalf of the victim. This bill codifies Justice Yu's dissenting opinion and clarifies the statute which protects the victim's constitutional right to testify at sentencing.

OTHER: The difficulty with cold cases is taking it to trial 30 or 40 years after the crime when most of the witnesses were not alive, and when DNA contamination was an issue because in the 1970's investigators did not wear latex gloves. The case was rife with problems and a plea agreement was the best option. Judge McCarthy stated on the record that he would have imposed the same sentence whether Detective Tompkins had testified or not. The victim was assaulted and then strangled to death with her blouse and hairnet.

The language of the bill should be changed to use a community based advocate appointed by the prosecutor to testify on behalf of the victim as an alternative to the investigating law enforcement officer. There should be disclosure, prior to the plea agreement, so that the defendant knows that a third voice, the victim or victim's representative, can testify at sentencing. A defendant's due process rights do not trump the victim's constitutional right to testify, but they do have to be integrated. A community based advocate can ensure that due process is not violated while speaking on behalf of the victim.

Persons Testifying: PRO: Senator Padden, prime sponsor; Marge Jubie Martin, Exec. Dir., Victim Support Services; Brad Tower, WA Coalition of Crime Victims Advocates; James McMahan, WA Assn. of Sheriffs & Police Chiefs.

OTHER: Detective Scott Tompkins, King County Sheriff's Office; Kristin Richardson, King County Prosecutor's Office; Tom McBride, WA Assn. of Prosecuting Attorneys.

Persons Signed in to Testify But Not Testifying: No one.