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**SUBSTITUTE SENATE BILL 6099**

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**State of Washington                      64th Legislature      2015 2nd Special Session**

**By Senate Law & Justice** (originally sponsored by Senators Padden, O'Ban, and Conway)

READ FIRST TIME 06/19/15.

1            AN ACT Relating to appointing a representative for a crime victim  
2 in certain circumstances; amending RCW 9.94A.500; creating a new  
3 section; and providing an effective date.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds that in 1978, Arlene  
6 Roberts was found dead in her home. She was the eighty year old  
7 victim of a brutal murder by asphyxiation by strangulation. In 2010,  
8 detective Scott Tompkins reviewed the case files and matched  
9 fingerprints from the scene to Ronald Wayne MacDonald. MacDonald  
10 pleaded guilty to reduced charges in exchange for a five-year  
11 suspended sentence. At sentencing, Detective Tompkins spoke as the  
12 representative of the victim and asked for the maximum sentence,  
13 which the court imposed. The Washington state supreme court in *State*  
14 *v. MacDonald*, Cause No. 89912-6 (April 9, 2015), reversed and  
15 remanded for further action by the sentencing court holding that RCW  
16 9.94A.500 does not permit an investigating officer serving as a  
17 representative of the victim in court to make a recommendation that  
18 undermines a plea agreement.

19            The dissent in the case argued persuasively that a "crime victim  
20 has the basic and fundamental right ... to make a statement at  
21 sentencing" (Washington State Constitution, Article I, section 35.3).

1 This right cannot be minimized on the basis that the victim of a  
2 brutal homicide is deceased. Instead, where the "victim is  
3 deceased ... the prosecuting attorney may identify a representative  
4 to appear to exercise the victim's rights." The dissent further noted  
5 that "[w]ith no family, friends, or estate to speak or request a  
6 victim representative, Detective Tompkins was the only person  
7 familiar with the horrific reality of the victim's death. Without  
8 Detective Tompkins, the victim would have had no one to speak on her  
9 behalf."

10 The legislature finds that in extremely narrow circumstances  
11 where the victim is deceased and has no estate or surviving family or  
12 any other representative, a prosecuting attorney shall be able to  
13 exercise his or her authority under Article I, section 35.3 to  
14 appoint an investigating officer to serve as the representative of  
15 the victim for the purposes of sentencing under RCW 9.94A.500. This  
16 act is intended to clarify and cure any ambiguity that might have led  
17 to the Washington state supreme court's decision in *State v.*  
18 *MacDonald*, Cause No. 89912-6 (April 9, 2015), and shall be applied  
19 retroactively.

20 **Sec. 2.** RCW 9.94A.500 and 2013 c 200 s 33 are each amended to  
21 read as follows:

22 (1) Before imposing a sentence upon a defendant, the court shall  
23 conduct a sentencing hearing. The sentencing hearing shall be held  
24 within forty court days following conviction. Upon the motion of  
25 either party for good cause shown, or on its own motion, the court  
26 may extend the time period for conducting the sentencing hearing.

27 Except in cases where the defendant shall be sentenced to a term  
28 of total confinement for life without the possibility of release or,  
29 when authorized by RCW 10.95.030 for the crime of aggravated murder  
30 in the first degree, sentenced to death, the court may order the  
31 department to complete a risk assessment report. If available before  
32 sentencing, the report shall be provided to the court.

33 Unless specifically waived by the court, the court shall order  
34 the department to complete a chemical dependency screening report  
35 before imposing a sentence upon a defendant who has been convicted of  
36 a violation of the uniform controlled substances act under chapter  
37 69.50 RCW, a criminal solicitation to commit such a violation under  
38 chapter 9A.28 RCW, or any felony where the court finds that the  
39 offender has a chemical dependency that has contributed to his or her

1 offense. In addition, the court shall, at the time of plea or  
2 conviction, order the department to complete a presentence report  
3 before imposing a sentence upon a defendant who has been convicted of  
4 a felony sexual offense. The department of corrections shall give  
5 priority to presentence investigations for sexual offenders. If the  
6 court determines that the defendant may be a mentally ill person as  
7 defined in RCW 71.24.025, although the defendant has not established  
8 that at the time of the crime he or she lacked the capacity to commit  
9 the crime, was incompetent to commit the crime, or was insane at the  
10 time of the crime, the court shall order the department to complete a  
11 presentence report before imposing a sentence.

12 The court shall consider the risk assessment report and  
13 presentence reports, if any, including any victim impact statement  
14 and criminal history, and allow arguments from the prosecutor, the  
15 defense counsel, the offender, the victim, the survivor of the  
16 victim, or a representative of the victim or survivor, and an  
17 investigative law enforcement officer as to the sentence to be  
18 imposed. If the victim is deceased and has no estate or surviving  
19 family or any other representative, a prosecuting attorney may  
20 appoint a community-based advocate or an investigative law  
21 enforcement officer to serve as a representative of the victim. A  
22 community-based advocate or law enforcement officer appointed as a  
23 representative of the victim may make a recommendation for a sentence  
24 different than that provided in a plea agreement.

25 A criminal history summary relating to the defendant from the  
26 prosecuting authority or from a state, federal, or foreign  
27 governmental agency shall be prima facie evidence of the existence  
28 and validity of the convictions listed therein. If the court is  
29 satisfied by a preponderance of the evidence that the defendant has a  
30 criminal history, the court shall specify the convictions it has  
31 found to exist. All of this information shall be part of the record.  
32 Copies of all risk assessment reports and presentence reports  
33 presented to the sentencing court and all written findings of facts  
34 and conclusions of law as to sentencing entered by the court shall be  
35 sent to the department by the clerk of the court at the conclusion of  
36 the sentencing and shall accompany the offender if the offender is  
37 committed to the custody of the department. Court clerks shall  
38 provide, without charge, certified copies of documents relating to  
39 criminal convictions requested by prosecuting attorneys.

1           (2) To prevent wrongful disclosure of information and records  
2 related to mental health services, as described in RCW 71.05.445 and  
3 70.02.250, a court may take only those steps necessary during a  
4 sentencing hearing or any hearing in which the department presents  
5 information related to mental health services to the court. The steps  
6 may be taken on motion of the defendant, the prosecuting attorney, or  
7 on the court's own motion. The court may seal the portion of the  
8 record relating to information relating to mental health services,  
9 exclude the public from the hearing during presentation or discussion  
10 of information and records relating to mental health services, or  
11 grant other relief to achieve the result intended by this subsection,  
12 but nothing in this subsection shall be construed to prevent the  
13 subsequent release of information and records related to mental  
14 health services as authorized by RCW 71.05.445, 70.02.250, or  
15 72.09.585. Any person who otherwise is permitted to attend any  
16 hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded  
17 from the hearing solely because the department intends to disclose or  
18 discloses information related to mental health services.

19           NEW SECTION.   **Sec. 3.** This act takes effect August 1, 2015.

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