

SENATE BILL REPORT

SB 5635

As Reported by Senate Committee On:
Law & Justice, February 16, 2023
Ways & Means, February 23, 2023

Title: An act relating to enhancing victims' rights.

Brief Description: Concerning victims' rights.

Sponsors: Senators Braun, Dhingra, Frame, Wilson, C. and Wilson, L..

Brief History:

Committee Activity: Law & Justice: 2/13/23, 2/16/23 [DPS].
Ways & Means: 2/21/23, 2/23/23 [DP2S].

Brief Summary of Second Substitute Bill

- Expands the rights of victims and survivors of victims to be informed of the trial and sentencing hearing in any case, and to present a statement personally or by representation at the sentencing in any case.
- Provides additional rights to have the victims' safety considered in bail considerations, to provide written input when the court sets a date for trial, and to be informed of the offenders place of incarceration, release from confinement, and any escape.
- Specifies that the Legislature intends to provide funding sufficient to support crime victim advocates and prosecutors in their work to ensure the rights granted to victims, survivors of victims, and witnesses of crimes are protected.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5635 be substituted therefor, and the substitute bill do pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: William Bridges (786-7312)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5635 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Staff: Trevor Press (786-7446)

Background: Under Washington law, a reasonable effort must be made to ensure that victims, survivors of victims, and witnesses of crimes have various rights in criminal court and juvenile court proceedings. Some examples of the rights that should be afforded to victims, survivors of victims, and witnesses of crimes include:

- with respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim;
- with respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;
- with respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;
- to submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which must be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution; and
- with respect to victims and survivors of victims, to present a statement personally or by representation, at the sentencing hearing for felony convictions.

Summary of Bill (Second Substitute): Victims and survivors of victims have a right to be informed of the date, time, and place of the trial and sentencing hearing, and are allowed to present a statement personally or by representation, at the sentencing hearing for convictions for any case. The change removes a limitation that those rights are only for a felony case or case involving domestic violence.

The following additional rights are provided for victims, survivors of victims, and witnesses of crimes:

- to have the victim's safety considered in bail determinations;
- when the court sets a date for trial:
 1. a court when setting a trial date may take into consideration the written input of the victim or family of a victim;
 2. the victim's input on the scheduling of a trial date cannot impair the right of the state to present an effective prosecution or the right of the defendant to present an effective defense;
 3. if a trial cannot be provided in a reasonable time frame, the court shall provide an explanation for the delay; and
- to be informed of victim notification services which may be available, and which can provide notification regarding the offender's place of incarceration, release from confinement, and of any escape.

The Legislature intends to provide funding to the Office of Crime Victims Advocacy in an amount sufficient to support crime victim advocates and prosecutors in their work to ensure the rights granted to victims, survivors of victims, and witnesses of crimes are protected.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Changes language requiring the state to provide funding in an amount sufficient to support crime victim advocates and prosecutors in their work to instead specify that the Legislature intends to provide this funding.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Removes the right of a victim to be heard when the court sets a date for trial.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is simple. Victim's rights should be more considered in the law. This has been done for victims of sexual assault and domestic violence, but this can leave other victims behind. Removing

words like felony and DV from the definition is good because not all sexual assaults are charged as such. There are increasing assaults on public services, fire and police officers, and regular people going about their lives. More can be done to protect victims to ensure they have a sense of security and safety. Victims should be able to speak, they should be able to have their safety considered in bail determinations. They should be informed when defendants are released. This bill is about looking after their wellbeing. The intent here is not to overstep a defendant's constitutional rights and protections. This may add an additional administrative strain on the court.

OTHER: This bill should be more equitable. It may come into conflict with the constitutional right to a speedy trial. This bill will weaken that right. It may allow individuals who are not a party to a criminal case to push the court to move the trial date because it conflicts with their plans. This bill may create a conflict with current criminal court rules. There is presumption of release for every defendant not in a capital case. This may change that. Safety concerns of alleged victim is already determined with bail. Codifying an alleged victim's safety for bail determination serves little purpose aside from providing additional fodder for prosecutors to use in bail hearings. This language would be another tool used to further enrage black and brown people.

Persons Testifying (Law & Justice): PRO: Senator John Braun, Prime Sponsor; Ann Davison, Seattle City Attorney's Office; Russell Brown, WA Association of Prosecuting Attorneys; Mary Ellen Stone, KCSARC.

OTHER: Jonathan Nomamiukor, Columbia legal services.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: Washington should ensure that it is being transparent about addressing victim's rights.

OTHER: This bill will expand the number of victims that are able to participate in the criminal justice system in a more meaningful way. This bill does not touch on municipal courts, which needs to be addressed. There are concerns about the unknown fiscal impact and definition of "sufficient" funding. There needs to be full funding from the state.

Persons Testifying (Ways & Means): PRO: Senator John Braun, Prime Sponsor.

OTHER: Russell Brown, WA Association of Prosecuting Attorneys; Lindsey Hueer, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.