

HOUSE BILL REPORT

ESSB 6472

As Passed House - Amended:

March 3, 2004

Title: An act relating to victims of crime.

Brief Description: Revising provisions relating to victims of crime.

Sponsors: By Senate Committee on Children & Family Services & Corrections (originally sponsored by Senators Hargrove, McAuliffe, Esser, Regala, Stevens and Kohl-Welles; by request of Department of Community, Trade, and Economic Development).

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 2/24/04, 2/26/04 [DPA].

Floor Activity:

Passed House - Amended: 3/3/04, 96-0.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Adds two definitions of "victim" to the statutes pertaining to juvenile offenders.
- Requires the juvenile justice system to recognize the rights of victims and to provide notice and an opportunity to participate in the legal process.
- Makes changes to restitution requirements for diversions and adjudications.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: Do pass as amended. Signed by 6 members: Representatives Dickerson, Chair; Pettigrew, Vice Chair; Carrell, Hinkle, Lovick and Upthegrove.

Minority Report: Do not pass. Signed by 1 member: Representative Delvin, Ranking Minority Member.

Staff: Sonja Hallum (786-7092).

Background:

The Washington Legislature has recognized rights of crime victims both statutorily and through the State Constitution. Victims are recognized to have the right to respect, the right to be informed, the right to be present, and the right to be heard, as well as many other

specifically enumerated rights. Currently, the statutes relating to the juvenile justice system do not specifically incorporate the provisions relating to victim rights.

The only definition of victim in the juvenile justice statutes pertains to the definition of a victim for the purposes of the Special Sex Offender Disposition Alternative (SSODA).

The Juvenile Justice Act establishes a system for juvenile offenders. The system allows first-time offenders to avoid the formal court process by entering into a diversion agreement. Under a diversion agreement, the juvenile may be required to pay restitution for damages, complete community restitution, attend counseling or other informational sessions, pay a fine, follow rules regarding curfew and other rules regarding contact with victims. The diversion agreement may continue for a period of up to six months. If the restitution obligation is not completed within six months, the agreement may be extended for a maximum of six additional months for payment of restitution. If there is restitution remaining at the end of the 12 month period, the statute permits the juvenile to request the court to enter an order establishing the amount of restitution still owed to the victim.

The juvenile justice system also establishes procedures for juveniles who are prosecuted through the formal court system. If the offender is adjudicated of a juvenile offense the court will enter a disposition order establishing his or her sentence. If the offense is a sex offense the offender may be sentenced to the SSODA program if he or she meets the qualifications for the program. If the offender enters the program, the court will set out treatment requirements. One such requirement the court may order is that the offender is not permitted to attend the same school as the victim or the victim's siblings.

The disposition order may also establish restitution the offender is required to pay the victim of the offense. Restitution is allowed for a variety of losses to the victim including medical expenses, the value of property, lost wages, and costs of counseling reasonably related to the offense if the offense is a sex offense. Once a restitution order is entered, the offender may petition the court for a modification of the restitution order.

The disposition may impose monetary penalties on the offender. Monetary penalties are financial assessments and do not include restitution to the victim. The offender may petition the court to convert the monetary penalties into community restitution.

Summary of Amended Bill:

Definitions:

Two additional definitions of victim are added to the statutes dealing with juvenile offenders. A definition is added to the Chemical Dependency Disposition Alternative and Restitution statutes.

The definitions consider a victim to include a person who has sustained emotional, psychological, physical, or financial injury as a direct result of the crime charged. The added

definitions permit a parent or guardian of a minor child or a child who is incapacitated, incompetent, disabled or deceased to be considered a victim for the purposes of the statutes.

Victim Rights:

The intent section of the Juvenile Justice Act is modified to specify that the juvenile justice system is to be responsible, accountable and respond to the needs of victims in addition to youthful offenders. Additionally, the purposes of the system must include providing for the opportunity for victims to participate in court proceedings and to ensure the Victim Bill of Rights in the Washington Constitution is observed.

The statute relating to the rights of victims, and the statute relating to child victims and witnesses, are modified to specify that the provisions of those statutes apply to any criminal court or juvenile court proceeding. Additionally, the victim of any violent or sex crime is given the right to have any support person of the victim's choosing present at any prosecutorial or defense interviews so long as it does not unnecessarily delay the investigation or prosecution of the case.

Diversion:

The victim must be provided with notice of the diversion process and the opportunity to offer a victim impact letter and restitution claim form to the extent possible.

Disposition:

The statute relating to the SSODA program is changed to state that the treatment plan for the sex offender shall prohibit the sex offender from attending the same school as the victim or the victim's siblings.

If the court orders the offender to pay a monetary penalty, the court may only convert the monetary penalty to community restitution if the penalty is not a crime victim penalty assessment.

Restitution:

In addition to the changes in the restitution required in diversion cases, restitution is permitted in all cases for all costs of counseling for a victim regardless of the nature of the offense so long as the counseling is reasonably related to the offense.

The court is permitted to not order, or relieve the respondent of the requirement, to pay restitution to insurance providers if the respondent can reasonably satisfy the court that he or she does not have the means to make full or partial restitution to the insurance providers and could not reasonably acquire the means to do so over a 10-year period.

Miscellaneous Provisions:

The provision requiring probation officers to prepare predisposition reports for dependency proceedings is removed.

The effective date of the act is July 1, 2004.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on July 1, 2004.

Testimony For: (In support on original striking amendment) It is important to allow a judge to consider waiving or modifying restitution. If the court is required to always award restitution to insurance companies it has the effect of creating a two-tiered system of justice, especially with respect to deferred dispositions and diversions. There is an interest in seeing that juveniles are rehabilitated. Many of these kids are foster kids with no parents to help them and their foster parent won't help them pay for restitution. A 12 year old usually doesn't have any source of income other than parents. Restitution that is distributed proportionally isn't going to get the real victim paid more quickly. If a kid is on a deferred disposition they are required to pay back money more quickly. The amendment deals with the reality of restitution and holding kids accountable while making victims whole quicker. It gives poor kids the same opportunities.

(In support on original engrossed substitute/concerns on original striking amendment) The bill seeks to assist victims to keep their rights when there is a juvenile offense. This is an important piece of legislation for victims. It is important not to limit counseling to just sex offenses. There are concerns with the striking amendment: the language about notifying diversion victims "to the extent" possible and the changes to the restitution. The juvenile should be required to pay the restitution. The court already has the discretion to determine how much the juvenile can pay. Restitution is the bill the juvenile owes. Restitution is the only thing that goes directly to the victim. The definition of victim is crucial.

Testimony Against: None.

Persons Testifying: (In support on original striking amendment) Daniel Sorenson and Kim Ambrose, Washington Defender Association; and Kim Ambrose, University of Washington School of Law Child Advocacy Clinic.

(In support on original engrossed substitute/concerns on original striking amendment) Tom McBride and Bev Emery; Department of Community, Trade and Economic Development; and Deborah Lee, Washington Coalition of Crime Victim Advocates.

Persons Signed In To Testify But Not Testifying: None.