

SENATE BILL REPORT

SB 6472

As Reported By Senate Committee On:
Children & Family Services & Corrections, February 4, 2004

Title: An act relating to victims of crime.

Brief Description: Revising provisions relating to victims of crime.

Sponsors: Senators Hargrove, McAuliffe, Esser, Regala, Stevens and Kohl-Welles; by request of Department of Community, Trade, and Economic Development.

Brief History:

Committee Activity: Children & Family Services & Corrections: 1/28/04, 2/4/04 [DPS].

SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6472 be substituted therefor, and the substitute bill do pass.

Signed by Senators Stevens, Chair; Parlette, Vice Chair; Carlson, Deccio, Hargrove, McAuliffe and Regala.

Staff: Lilah Amos (786-7429)

Background: Currently, victims, survivors of victims, and witnesses of crimes committed by adults have statutory rights, including notification of criminal proceedings and the right to participate in them, protection from harm for cooperating with law enforcement, the right to have a crime victim advocate from a crime victim/witness program present at interviews and court proceedings, and payment of restitution from the defendant. Victims of juvenile offenders are not specifically given these rights by statute.

In 1990, the definition of restitution for juvenile offenders in RCW 13.40.020(22) was expanded by the Legislature to include "costs of the victim's counseling reasonably related to the offense if the offense is a sex offense." However, RCW 13.40.190, which contained requirements for the disposition order and restitution, allowed restitution for "costs of counseling reasonably related to the offense" and was not changed to include the sex offense limitation for counseling cost restitution. This inconsistency in the two statutes was identified by the Washington Supreme Court in 2003. In interpreting legislative intent, the court found that restitution was only available for counseling for victims of sex offenses, since that was the most recent and most specific definition of restitution. Therefore, the victim of assault in the fourth degree with sexual motivation was not allowed to receive restitution for counseling costs.

A juvenile offender is currently allowed to petition the court for modification of the amount of restitution which is ordered.

Summary of Substitute Bill: Victims, survivors of victims, and witnesses of crimes committed by juveniles are added to the statute specifying rights for victims of adult offenders. Victims of both adult and juvenile offenders have the right to a support person of their choosing at victim interviews and court proceedings.

Legislative intent regarding restitution for juvenile offenders is clarified and an inconsistency is eliminated. Restitution for counseling costs reasonably related to the offense is authorized for victims of all juvenile offenses, not just for sex offenses.

A definition of "victim" is added to juvenile crime statutes and includes any person who has sustained injury as a direct result of the crime, as well as a known parent or guardian of a minor victim or a victim who is not a minor but is incapacitated or incompetent.

In diversion cases, restitution is part of the diversion agreement and consists of the easily ascertainable (as opposed to actual) loss to the victim. Victims of a juvenile in a diversion program are to be advised of the diversion process and given forms for victim impact letters and restitution claims. In both diversion and disposition orders requiring restitution, the juvenile can ask for a modification of the payment schedule but cannot modify the amount of restitution previously ordered.

Language governing orders in dispositions involving sex offender treatment is clarified to ensure that a court shall order that an offender shall not attend the same school as the victim or the victim's siblings.

Substitute Bill Compared to Original Bill: The court is allowed to consider the juvenile's ability to pay in setting restitution in diversion cases. That provision is not changed to make it consistent with juvenile offender cases.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The intent of this legislation is to provide victims with the same rights regarding participation, notification, and restitution regardless of the offender's status as a juvenile or an adult. An inconsistency in existing law which was discussed by the Washington Supreme Court is removed and clarifies that a court can order counseling for victims in all cases, not just in sexual assault cases. The statutory rights of crime victims should be available in juvenile court proceedings.

Testimony Against: There is concern that the definition of victim is much too broad and that unlimited amounts of restitution could be assessed against juveniles. Allowing a support person of the victim's choice could inhibit the fact-finding nature of victim interviews.

Testified: PRO: Tom McBride, WAPA; Suzanne McBride, Washington Association of Sexual Assault Victims; Deborah Lee, Washington Coalition of Crime Victims. CON: Sherry Appleton, WDA/WACDL.