

# SENATE BILL REPORT

## ESSB 6472

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As Passed Senate, February 13, 2004

**Title:** An act relating to victims of crime.

**Brief Description:** Revising provisions relating to victims of crime.

**Sponsors:** 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:** Children & Family Services & Corrections: 1/28/04, 2/4/04 [DPS].  
Passed Senate: 2/13/04, 48-0.

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### 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. Concern exists that provisions regarding victims' rights and restitution are not consistent in adult and juvenile courts, and that victims may be treated differently depending on the age and status of the person who committed the crime against them.

In 2003, the Washington Supreme Court identified an inconsistency in statutes regarding restitution available to victims of juvenile offenders. RCW 13.40.190, which contains requirements for disposition orders and restitution, allows restitution for counseling costs "reasonably related to the offense." In 1990, the definition of restitution in RCW 13.40.020 (22) was expanded to include "costs of the victim's counseling reasonably related to the offense if the offense is a sex offense." In interpreting legislative intent, the court found that juvenile offenders can be ordered to pay counseling costs only for victims of sex offenses, not all offenses, thereby precluding the award of restitution for counseling costs for a victim of assault in the fourth degree with sexual motivation.

A diversion agreement in juvenile court can include restitution, but restitution is not mandatory. If restitution is not paid, the court can relieve the juvenile of the obligation to pay

restitution if the juvenile is unable to pay. The court can modify the amount of a restitution order for juvenile offenders and for juveniles subject to diversion.

The court can convert a fine or monetary penalty due from a juvenile offender to community restitution.

**Summary of Bill:** Victims, survivors of victims, and witnesses of crimes committed by juveniles are given the same rights as 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.

A provision for payment of restitution must be contained in a diversion agreement and must consist of the easily ascertainable loss to the victim. Victims of a juvenile in a diversion program must be advised of the diversion process and given forms for victim impact letters and restitution claims. If restitution is not paid, the court can relieve the juvenile of the obligation to pay full or partial restitution related to the diverted offense. If the juvenile is relieved of the restitution obligation, the court may order community restitution as it deems appropriate.

For juvenile offenses, the juvenile can petition the court for modification of the restitution payment schedule, but not for modification of the amount of the restitution ordered by the court.

Unlike a fine or monetary penalty, the crime victim penalty assessment required of juvenile offenders cannot be converted to community restitution.

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.

**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.

**House Amendment(s):**

- The victim of the juvenile offender is not encouraged to actively participate in the juvenile justice process, but is instead given an opportunity to participate.
- The current statute is changed to give the judge discretion to reduce or eliminate restitution which a juvenile must pay to an insurance provider if the juvenile does not have the means to pay and could not reasonably acquire the means to pay over a ten-year period.
- The bill no longer requires that restitution be included in a diversion agreement.
- The prohibition against the court modifying the amount of a juvenile offender's restitution is eliminated.
- The proposed language that restitution be awarded for injuries sustained as a "consequence" of the offense charged is eliminated. The existing statutory language that restitution includes injuries which are a "direct result" of the offense charged remains intact.
- The definition of victim is removed from the general definition section of the Juvenile Justice Act.
- The support person of the victim's choosing who is permitted to attend witness interviews and judicial proceedings is subject to the same restrictions as the crime victim advocate, and is therefore prohibited from unnecessarily delaying the investigation and prosecution of the crime.