

FINAL BILL REPORT

ESHB 2126

C 381 L 05

Synopsis as Enacted

Brief Description: Providing accommodations to dependent persons who are victims and witnesses.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Kenney, Kessler, Rodne, Linville, Hankins, Grant, Takko, Newhouse, Williams, Flannigan, Sells, Ormsby, Chase and Serben).

House Committee on Judiciary
Senate Committee on Judiciary

Background:

Definitions of Dependent Persons and Vulnerable Adults

There are various statutes making it a crime to mistreat a dependent person. A "dependent person" is defined in the criminal mistreatment laws as a person who, because of physical or mental disability or because of extreme advanced age, is dependent upon another for the basic necessities of life. The basic necessities of life means food, water, shelter, clothing, and medically necessary health care. A vulnerable adult, resident of a nursing home, or resident of an adult family home is presumed to be a dependent person. A person is a "vulnerable adult" if the person: (a) is 60 years old or older who has the functional, mental, or physical inability to care for him or herself; (b) is found incapacitated under the guardianship laws; (c) has a developmental disability; (d) is admitted to any residential care facility that is required to be licensed by the state; or (e) is receiving services from home health, hospice, or home care agencies or an individual provider.

Rights of Victims and Witnesses

In 1981, the Legislature enacted statutes establishing certain rights for victims and witnesses of crimes. Those rights generally address issues around keeping the victim informed and making it easier for the victim to participate in court proceedings. In 1985, the Legislature enacted similar statutes establishing rights for child victims and witnesses. Among the rights specifically for child victims and witnesses are provisions for advocates to be present in court and during interviews with the child and a provision to prohibit disclosure of certain identifying information for child victims.

The failure to provide notice of these rights does not result in civil liability as long as the failure to notify was in good faith and without gross negligence. The rights enumerated are not to be construed as creating substantive rights and duties, and, in an individual case, the rights are subject to the discretion of the law enforcement agency, prosecutor, or judge.

Depositions

Court rules, statutes, and case law allow the taking of a witness's deposition in criminal trials. Under the court rule, upon a showing that the witness may be unable to attend a hearing or refuses to discuss the case with counsel, the court may allow a deposition if the witness's testimony is material and necessary to prevent a failure of justice. The party taking the deposition must notify the other party in writing of the time and place, and the party receiving notice may ask the court to adjust the time and place. A deposition may not be used against a defendant who has not had notice of and an opportunity to participate in or be present at the deposition. The deposition may be used by any party to contradict or impeach the testimony of the witness who was deposed. Court rules and case law allow depositions to be recorded by video tape.

Summary:

A new chapter is created to provide rights to dependent persons who are victims and witnesses of crimes and allow for videotape depositions of dependent persons.

The definition of a dependent person is the same as that term is used in the criminal mistreatment laws, and it includes the presumption that a vulnerable adult, resident of a nursing home, or resident of an adult family home is a dependent person.

Rights of Victims and Witnesses Who Are Dependent Persons

A list of rights are enumerated for dependent persons who are victims or witnesses of crimes. The rights are the same as those listed for victims and witnesses and child victims and witnesses, except there is no provision regarding the victim's identifying information. The rights listed are not to be construed as creating substantive rights and duties, and each case is subject to the discretion of law enforcement, the prosecutor, or the judge.

Depositions

Prior to the commencement of a trial, the court may allow the prosecutor or defense to take a videotape deposition of the dependent person if it is likely that the dependent person will be unavailable to testify at trial. The court's finding of likely unavailability must be based upon, at a minimum, recommendations from the dependent person's doctor or anybody else with direct contact with the dependent person and based on the dependent person's specific behavior. The party seeking the deposition must provide reasonable written notice to the other party, who shall have the opportunity to be present and cross-exam the dependent person. The deposition may be used at trial if the dependent person is unavailable and the other party had notice of and an opportunity to be present at the deposition.

Liability

Failure to provide notice of the rights or to assure these rights to the dependent person shall not result in civil liability if the failure was in good faith.

Votes on Final Passage:

House	93	0	
Senate	45	0	(Senate amended)
House	96	0	(House concurred)

Effective: July 24, 2005