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**ENGROSSED SUBSTITUTE HOUSE BILL 2126**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**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)

READ FIRST TIME 03/03/05.

1       AN ACT Relating to providing accommodations to dependent persons  
2 who are victims and witnesses; and adding a new chapter to Title 7 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       NEW SECTION. **Sec. 1.** The legislature recognizes that it is  
5 important that dependent persons who are witnesses and victims of crime  
6 cooperate with law enforcement and prosecutorial agencies and that  
7 their assistance contributes to state and local enforcement efforts and  
8 the general effectiveness of the criminal justice system. The  
9 legislature finds that the state has an interest in making it possible  
10 for courts to adequately and fairly conduct cases involving dependent  
11 persons who are victims of crimes. Therefore, it is the intent of the  
12 legislature, by means of this chapter, to insure that all dependent  
13 persons who are victims and witnesses of crime are treated with  
14 sensitivity, courtesy, and special care and that their rights be  
15 protected by law enforcement agencies, prosecutors, and judges in a  
16 manner no less vigorous than the protection afforded to other victims,  
17 witnesses, and criminal defendants.

1        NEW SECTION.    **Sec. 2.** Unless the context clearly requires  
2 otherwise, the definitions in this section apply throughout this  
3 chapter.

4        (1) "Crime" means an act punishable as a felony, gross misdemeanor,  
5 or misdemeanor under the laws of this state or equivalent federal or  
6 local law.

7        (2) "Dependent person" has the same meaning as that term is defined  
8 in RCW 9A.42.010.

9        (3) "Victim" means a living person against whom a crime has been  
10 committed.

11       (4) "Witness" means a person who has been or is expected to be  
12 summoned to testify for the prosecution or defense in a criminal  
13 action, or who by reason of having relevant information is subject to  
14 call or likely to be called as a witness, whether or not an action or  
15 proceeding has been commenced.

16       (5) "Family member" means a person who is not accused of a crime  
17 and who is an adult child, adult sibling, spouse, parent, or legal  
18 guardian of the dependent person.

19       (6) "Advocate" means any person not accused of a crime, including  
20 a family member, approved by the witness or victim, in consultation  
21 with his or her guardian if applicable, who provides support to a  
22 dependent person during any legal proceeding.

23       (7) "Court proceedings" means any court proceeding conducted during  
24 the course of the prosecution of a crime committed against a dependent  
25 person, including pretrial hearings, trial, sentencing, or appellate  
26 proceedings.

27       (8) "Identifying information" means the dependent person's name,  
28 address, location, and photograph, and in cases in which the dependent  
29 person is a relative of the alleged perpetrator, identification of the  
30 relationship between the dependent person and the alleged perpetrator.

31       (9) "Crime victim/witness program" means any crime victim and  
32 witness program of a county or local law enforcement agency or  
33 prosecutor's office, any rape crisis center's sexual assault victim  
34 advocacy program as provided in chapter 70.125 RCW, any domestic  
35 violence program's legal and community advocate program for domestic  
36 violence victims as provided in chapter 70.123 RCW, or any other crime  
37 victim advocacy program which provides trained advocates to assist  
38 crime victims during the investigation and prosecution of the crime.

1        NEW SECTION.    **Sec. 3.**    (1) In addition to the rights of victims and  
2 witnesses provided for in RCW 7.69.030, there shall be every reasonable  
3 effort made by law enforcement agencies, prosecutors, and judges to  
4 assure that dependent persons who are victims or witnesses are afforded  
5 the rights enumerated in this section. The enumeration of rights under  
6 this chapter shall not be construed to create substantive rights and  
7 duties, and the application of an enumerated right in an individual  
8 case is subject to the discretion of the law enforcement agency,  
9 prosecutor, or judge. Dependent persons who are victims or witnesses  
10 in the criminal justice system have the following rights, which apply  
11 to any criminal court or juvenile court proceeding:

12        (a) To have explained in language easily understood by the  
13 dependent person, all legal proceedings and police investigations in  
14 which the dependent person may be involved.

15        (b) With respect to a dependent person who is a victim of a sex or  
16 violent crime, to have a crime victim advocate from a crime  
17 victim/witness program, or any other advocate of the victim's choosing,  
18 present at any prosecutorial or defense interviews with the dependent  
19 person. This subsection applies unless it creates undue hardship and  
20 if the presence of the crime victim advocate or other advocate does not  
21 cause any unnecessary delay in the investigation or prosecution of the  
22 case. The role of the crime victim advocate or other advocate is to  
23 provide emotional support to the dependent person and to promote the  
24 dependent person's feelings of security and safety.

25        (c) To be provided, whenever possible, a secure waiting area during  
26 court proceedings and to have an advocate or support person remain with  
27 the dependent person prior to and during any court proceedings.

28        (d) To allow an advocate to make recommendations to the prosecuting  
29 attorney about the ability of the dependent person to cooperate with  
30 prosecution and the potential effect of the proceedings on the  
31 dependent person.

32        (e) To allow an advocate to provide information to the court  
33 concerning the dependent person's ability to understand the nature of  
34 the proceedings.

35        (f) To be provided information or appropriate referrals to social  
36 service agencies to assist the dependent person with the emotional  
37 impact of the crime, the subsequent investigation, and judicial  
38 proceedings in which the dependent person is involved.

1 (g) To allow an advocate to be present in court while the dependent  
2 person testifies in order to provide emotional support to the dependent  
3 person.

4 (h) To provide information to the court as to the need for the  
5 presence of other supportive persons at the court proceedings while the  
6 dependent person testifies in order to promote the dependent person's  
7 feelings of security and safety.

8 (i) To allow law enforcement agencies the opportunity to enlist the  
9 assistance of other professional personnel such as victim advocates or  
10 prosecutorial staff trained in the interviewing of the dependent  
11 person.

12 (j) With respect to a dependent person who is a victim of a violent  
13 or sex crime, to receive either directly or through the dependent  
14 person's legal guardian, if applicable, at the time of reporting the  
15 crime to law enforcement officials, a written statement of the rights  
16 of dependent persons as provided in this chapter. The statement may be  
17 paraphrased to make it more easily understood. The written statement  
18 shall include the name, address, and telephone number of a county or  
19 local crime victim/witness program, if such a crime victim/witness  
20 program exists in the county.

21 (2) Any party may request a preliminary hearing for the purpose of  
22 establishing accommodations for the dependent person consistent with,  
23 but not limited to, the rights enumerated in this section.

24 NEW SECTION. **Sec. 4.** (1) The prosecutor or defense may file a  
25 motion with the court at any time prior to commencement of the trial  
26 for an order authorizing the taking of a video tape deposition for the  
27 purpose of preserving the direct testimony of the moving party's  
28 witness if that witness is a dependent person.

29 (2) The court may grant the motion if the moving party shows that  
30 it is likely that the dependent person will be unavailable to testify  
31 at a subsequent trial. The court's finding shall be based upon, at a  
32 minimum, recommendations from the dependent person's physician or any  
33 other person having direct contact with the dependent person and whose  
34 recommendations are based on specific behavioral indicators exhibited  
35 by the dependent person.

36 (3) The moving party shall provide reasonable written notice to the

1 other party of the motion and order, if granted, pursuant to superior  
2 court criminal rules for depositions.

3 (4) Both parties shall have an opportunity to be present at the  
4 deposition and the nonmoving party shall have the opportunity to cross-  
5 examine the dependent person.

6 (5) Under circumstances permitted by the rules of evidence, the  
7 deposition may be introduced as evidence in a subsequent proceeding if  
8 the dependent person is unavailable at trial and both the prosecutor  
9 and the defendant had notice of and an opportunity to participate in  
10 the taking of the deposition.

11 NEW SECTION. **Sec. 5.** (1) On motion of the prosecuting attorney in  
12 a criminal proceeding, the court may order that a dependent person may  
13 testify in a room outside the presence of the defendant or the jury, or  
14 both, while one-way closed circuit television equipment simultaneously  
15 projects the dependent person's testimony into another room so the  
16 defendant or the jury, or both, can watch and hear the dependent person  
17 testify if:

18 (a) The testimony is taken during the court proceeding;

19 (b) The court finds by substantial evidence, in a hearing conducted  
20 outside the presence of the jury, that requiring the dependent person  
21 to testify in the presence of the defendant or the jury, or both, will  
22 cause the dependent person to suffer serious emotional or mental  
23 distress that will prevent the dependent person from reasonably  
24 communicating at the trial or that the dependent person will suffer  
25 emotional or mental distress from testifying in the presence of the  
26 defendant or the jury, or both. If the defendant is excluded from the  
27 presence of the dependent person, the jury must also be excluded. If  
28 the dependent person is able to testify in the presence of the  
29 defendant but not the jury, the jury shall be excluded from the room  
30 and the defendant shall remain in the room with the dependent person;

31 (c) The court finds that the prosecutor has made all reasonable  
32 efforts to prepare the dependent person for testifying, including  
33 informing the dependent person about community counseling services,  
34 giving court tours, and explaining the trial process. If the  
35 prosecutor fails to demonstrate that preparations were implemented or  
36 the prosecutor in good faith attempted to implement them, the court  
37 shall deny the motion;

1 (d) The court balances the strength of the state's case without the  
2 testimony of the dependent person against the defendant's  
3 constitutional rights and the degree of infringement of the closed-  
4 circuit television procedure on those rights;

5 (e) The court finds that no less restrictive method of obtaining  
6 the testimony exists that can adequately protect the dependent person  
7 from the serious emotional or mental distress;

8 (f) When the court allows the dependent person to testify outside  
9 the presence of the defendant, the defendant can communicate constantly  
10 with the defense attorney by electronic transmission and be granted  
11 reasonable court recesses during the dependent person's testimony for  
12 person-to-person consultation with the defense attorney;

13 (g) The court can communicate with the attorneys by an audio system  
14 so that the court can rule on objections and otherwise control the  
15 proceedings;

16 (h) All parties in the room with the dependent person are on camera  
17 and can be viewed by all other parties. If viewing all participants is  
18 not possible, the court shall describe for the viewers the location of  
19 the prosecutor, defense attorney, and other participants in relation to  
20 the dependent person;

21 (i) The court finds that the television equipment is capable of  
22 making an accurate reproduction and the operator of the equipment is  
23 competent to operate the equipment; and

24 (j) The court imposes reasonable guidelines upon the parties for  
25 conducting the filming to avoid trauma to the dependent person or abuse  
26 of the procedure for tactical advantage.

27 (2) The prosecutor, defense attorney, and a neutral and trained  
28 victim's advocate, if any, shall always be in the room where the  
29 dependent person is testifying.

30 (3) During the hearing conducted under subsection (1) of this  
31 section to determine whether the dependent person may testify outside  
32 the presence of the defendant or the jury, or both, the court may  
33 conduct the observation and examination of the dependent person outside  
34 the presence of the defendant if:

35 (a) The prosecutor alleges and the court concurs that the dependent  
36 person will be unable to testify in front of the defendant or will  
37 suffer severe emotional or mental distress if forced to testify in  
38 front of the defendant;

1 (b) The defendant can observe and hear the dependent person by  
2 closed-circuit television;

3 (c) The defendant can communicate constantly with the defense  
4 attorney during the examination of the dependent person by electronic  
5 transmission and be granted reasonable court recesses during the  
6 dependent person's examination for person-to-person consultation with  
7 the defense attorney; and

8 (d) The court finds the closed-circuit television is capable of  
9 making an accurate reproduction and the operator of the equipment is  
10 competent to operate the equipment. Whenever possible, all the parties  
11 in the room with the dependent person shall be on camera so that the  
12 viewers can see all the parties. If viewing all participants is not  
13 possible, then the court shall describe for the viewers the location of  
14 the prosecutor, defense attorney, and other participants in relation to  
15 the dependent person.

16 (4) The court shall make particularized findings on the record  
17 articulating the factors upon which the court based its decision to  
18 allow the dependent person to testify via closed-circuit television  
19 pursuant to this section. The factors the court may consider include,  
20 but are not limited to, a consideration of the dependent person's age,  
21 physical health, emotional stability, expressions of fear made by the  
22 dependent person regarding testifying in open court or in front of the  
23 defendant, the relationship of the defendant to the dependent person,  
24 and the court's observations of the dependent person's inability to  
25 reasonably communicate in front of the defendant or in open court. The  
26 court's findings shall identify the impact the factors have upon the  
27 dependent person's ability to testify in front of the jury or the  
28 defendant, or both, and the specific nature of the emotional or mental  
29 trauma the dependent person would suffer. The court shall determine  
30 whether the source of the trauma is the presence of the defendant, the  
31 jury, or both, and shall limit the use of the closed-circuit television  
32 accordingly.

33 (5) This section does not apply if the defendant is an attorney pro  
34 se unless the defendant has a court-appointed attorney assisting the  
35 defendant in the defense.

36 (6) This section may not preclude the presence of both the victim  
37 and the defendant in the courtroom together for purposes of

1 establishing or challenging the identification of the defendant when  
2 identification is a legitimate issue in the proceeding.

3 (7) All recorded tapes of testimony produced by closed-circuit  
4 television equipment shall be subject to any protective order of the  
5 court for the purpose of protecting the privacy of the dependent  
6 person.

7 (8) Nothing in this section creates a right of the dependent person  
8 to a closed-circuit television procedure in lieu of testifying in open  
9 court.

10 (9) The state shall bear the costs of the closed-circuit television  
11 procedure.

12 NEW SECTION. **Sec. 6.** (1) The failure to provide notice to a  
13 dependent person of the rights enumerated in this chapter or the  
14 failure to provide the rights enumerated shall not result in civil  
15 liability so long as the failure was in good faith.

16 (2) Nothing in this chapter shall be construed to limit a party's  
17 ability to bring an action, including an action for damages, based on  
18 rights conferred by other state or federal law.

19 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute  
20 a new chapter in Title 7 RCW.

21 NEW SECTION. **Sec. 8.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

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