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**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 in a criminal action, or who by  
13 reason of having relevant information is subject to call or likely to  
14 be called as a witness for the prosecution, 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, who provides support  
21 to a dependent person during any legal proceeding.

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

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

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

1        NEW SECTION.    **Sec. 3.** 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        (1) 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        (2) 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        (3) 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        (4) To not have the dependent person's identifying information  
29 disclosed by any law enforcement agency, prosecutor's office, or state  
30 agency without the permission of the dependent person or his or her  
31 legal guardian, if applicable, to anyone except another law enforcement  
32 agency, prosecutor, defense counsel, or private or governmental agency  
33 that provides services to the dependent person if such disclosure will  
34 harm the dependent person's reputation. If identifying information  
35 that would be harmful to the dependent person's reputation is disclosed  
36 to a party other than another law enforcement agency, prosecutor's  
37 office, or state agency, the disclosing party shall request a written

1 agreement by the recipient of the information stating that the  
2 recipient will not further disseminate the information without the  
3 dependent person's written consent.

4 (5) To allow an advocate to make recommendations to the prosecuting  
5 attorney about the ability of the dependent person to cooperate with  
6 prosecution and the potential effect of the proceedings on the  
7 dependent person.

8 (6) To allow an advocate to provide information to the court  
9 concerning the dependent person's ability to understand the nature of  
10 the proceedings.

11 (7) To be provided information or appropriate referrals to social  
12 service agencies to assist the dependent person with the emotional  
13 impact of the crime, the subsequent investigation, and judicial  
14 proceedings in which the dependent person is involved.

15 (8) To allow an advocate to be present in court while the dependent  
16 person testifies in order to provide emotional support to the dependent  
17 person.

18 (9) To provide information to the court as to the need for the  
19 presence of other supportive persons at the court proceedings while the  
20 dependent person testifies in order to promote the dependent person's  
21 feelings of security and safety.

22 (10) To allow law enforcement agencies the opportunity to enlist  
23 the assistance of other professional personnel such as victim advocates  
24 or prosecutorial staff trained in the interviewing of the dependent  
25 person.

26 (11) With respect to a dependent person who is a victim of a  
27 violent or sex crime, to receive either directly or through the  
28 dependent person's legal guardian, if applicable, at the time of  
29 reporting the crime to law enforcement officials, a written statement  
30 of the rights of dependent persons as provided in this chapter. The  
31 statement may be paraphrased to make it more easily understood. The  
32 written statement shall include the name, address, and telephone number  
33 of a county or local crime victim/witness program, if such a crime  
34 victim/witness program exists in the county.

35 NEW SECTION. **Sec. 4.** (1) The prosecutor may file a motion with  
36 the court at any time prior to commencement of the trial for an order

1 authorizing the taking of a video tape deposition of the dependent  
2 person's testimony.

3 (2) The court may grant the motion if the prosecutor shows that it  
4 is likely that the dependent person will be unavailable to testify at  
5 a subsequent trial. The court's finding shall be based upon, at a  
6 minimum, recommendations from the dependent person's physician or any  
7 other person having direct contact with the dependent person and whose  
8 recommendations are based on specific behavioral indicators exhibited  
9 by the dependent person.

10 (3) The prosecutor shall provide reasonable written notice to the  
11 defendant of the motion and order, if granted, pursuant to superior  
12 court criminal rules for depositions.

13 (4) The defendant shall have an opportunity to be present at the  
14 deposition and to cross-examine the dependent person.

15 (5) Under circumstances permitted by the rules of evidence, the  
16 deposition may be introduced as evidence in a subsequent proceeding if  
17 the dependent person is unavailable at trial and the defendant had  
18 notice of and an opportunity to participate in the taking of the  
19 deposition.

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

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

28 (b) The court finds by substantial evidence, in a hearing conducted  
29 outside the presence of the jury, that requiring the dependent person  
30 to testify in the presence of the defendant or the jury, or both, will  
31 cause the dependent person to suffer serious emotional or mental  
32 distress that will prevent the dependent person from reasonably  
33 communicating at the trial or that the dependent person will suffer  
34 emotional or mental distress from testifying in the presence of the  
35 defendant or the jury, or both. If the defendant is excluded from the  
36 presence of the dependent person, the jury must also be excluded. If

1 the dependent person is able to testify in the presence of the  
2 defendant but not the jury, the jury shall be excluded from the room  
3 and the defendant shall remain in the room with the dependent person;

4 (c) The court finds that the prosecutor has made all reasonable  
5 efforts to prepare the dependent person for testifying, including  
6 informing the dependent person about community counseling services,  
7 giving court tours, and explaining the trial process. If the  
8 prosecutor fails to demonstrate that preparations were implemented or  
9 the prosecutor in good faith attempted to implement them, the court  
10 shall deny the motion;

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

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

18 (f) When the court allows the dependent person to testify outside  
19 the presence of the defendant, the defendant can communicate constantly  
20 with the defense attorney by electronic transmission and be granted  
21 reasonable court recesses during the dependent person's testimony for  
22 person-to-person consultation with the defense attorney;

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

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

31 (i) The court finds that the television equipment is capable of  
32 making an accurate reproduction and the operator of the equipment is  
33 competent to operate the equipment; and

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

37 (2) The prosecutor, defense attorney, and a neutral and trained

1 victim's advocate, if any, shall always be in the room where the  
2 dependent person is testifying.

3 (3) During the hearing conducted under subsection (1) of this  
4 section to determine whether the dependent person may testify outside  
5 the presence of the defendant or the jury, or both, the court may  
6 conduct the observation and examination of the dependent person outside  
7 the presence of the defendant if:

8 (a) The prosecutor alleges and the court concurs that the dependent  
9 person will be unable to testify in front of the defendant or will  
10 suffer severe emotional or mental distress if forced to testify in  
11 front of the defendant;

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

14 (c) The defendant can communicate constantly with the defense  
15 attorney during the examination of the dependent person by electronic  
16 transmission and be granted reasonable court recesses during the  
17 dependent person's examination for person-to-person consultation with  
18 the defense attorney; and

19 (d) The court finds the closed-circuit television is capable of  
20 making an accurate reproduction and the operator of the equipment is  
21 competent to operate the equipment. Whenever possible, all the parties  
22 in the room with the dependent person shall be on camera so that the  
23 viewers can see all the parties. If viewing all participants is not  
24 possible, then the court shall describe for the viewers the location of  
25 the prosecutor, defense attorney, and other participants in relation to  
26 the dependent person.

27 (4) The court shall make particularized findings on the record  
28 articulating the factors upon which the court based its decision to  
29 allow the dependent person to testify via closed-circuit television  
30 pursuant to this section. The factors the court may consider include,  
31 but are not limited to, a consideration of the dependent person's age,  
32 physical health, emotional stability, expressions of fear made by the  
33 dependent person regarding testifying in open court or in front of the  
34 defendant, the relationship of the defendant to the dependent person,  
35 and the court's observations of the dependent person's inability to  
36 reasonably communicate in front of the defendant or in open court. The  
37 court's findings shall identify the impact the factors have upon the  
38 dependent person's ability to testify in front of the jury or the

1 defendant, or both, and the specific nature of the emotional or mental  
2 trauma the dependent person would suffer. The court shall determine  
3 whether the source of the trauma is the presence of the defendant, the  
4 jury, or both, and shall limit the use of the closed-circuit television  
5 accordingly.

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

9 (6) This section may not preclude the presence of both the victim  
10 and the defendant in the courtroom together for purposes of  
11 establishing or challenging the identification of the defendant when  
12 identification is a legitimate issue in the proceeding.

13 (7) All recorded tapes of testimony produced by closed-circuit  
14 television equipment shall be subject to any protective order of the  
15 court for the purpose of protecting the privacy of the dependent  
16 person.

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

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

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

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

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

31 NEW SECTION. **Sec. 8.** If any provision of this act or its  
32 application to any person or circumstance is held invalid, the  
33 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.

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