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SENATE BILL 6691

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State of Washington

59th Legislature

2006 Regular Session

By Senators Weinstein and Kline

Read first time 01/19/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to notice to prosecutors when crime victims'  
2 records are sought; and amending RCW 70.125.065, 7.69.030, and  
3 7.69A.030.

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

5 **Sec. 1.** RCW 70.125.065 and 1981 c 145 s 9 are each amended to read  
6 as follows:

7 Records maintained by rape crisis centers shall not be made  
8 available to any defense attorney as part of discovery in a sexual  
9 assault case unless:

10 (1) A written pretrial motion is made by the defendant to the court  
11 stating that the defendant is requesting discovery of the rape crisis  
12 center's records;

13 (2) The written motion is accompanied by an affidavit or affidavits  
14 setting forth specifically the reasons why the defendant is requesting  
15 discovery of the rape crisis center's records. The written motion and  
16 accompanying affidavits shall be served on the prosecuting attorney at  
17 the time the motion is filed;

18 (3) The court reviews the rape crisis center's records in camera to  
19 determine whether the rape crisis center's records are relevant and

1 whether the probative value of the records is outweighed by the  
2 victim's privacy interest in the confidentiality of such records taking  
3 into account the further trauma that may be inflicted upon the victim  
4 by the disclosure of the records to the defendant; and

5 (4) The court enters an order stating whether the records or any  
6 part of the records are discoverable and setting forth the basis for  
7 the court's findings.

8 **Sec. 2.** RCW 7.69.030 and 2004 c 120 s 8 are each amended to read  
9 as follows:

10 There shall be a reasonable effort made to ensure that victims,  
11 survivors of victims, and witnesses of crimes have the following  
12 rights, which apply to any criminal court and/or juvenile court  
13 proceeding:

14 (1) With respect to victims of violent or sex crimes, to receive,  
15 at the time of reporting the crime to law enforcement officials, a  
16 written statement of the rights of crime victims as provided in this  
17 chapter. The written statement shall include the name, address, and  
18 telephone number of a county or local crime victim/witness program, if  
19 such a crime victim/witness program exists in the county;

20 (2) To be informed by local law enforcement agencies or the  
21 prosecuting attorney of the final disposition of the case in which the  
22 victim, survivor, or witness is involved;

23 (3) To be notified by the party who issued the subpoena that a  
24 court proceeding to which they have been subpoenaed will not occur as  
25 scheduled, in order to save the person an unnecessary trip to court;

26 (4) To receive protection from harm and threats of harm arising out  
27 of cooperation with law enforcement and prosecution efforts, and to be  
28 provided with information as to the level of protection available;

29 (5) To be informed of the procedure to be followed to apply for and  
30 receive any witness fees to which they are entitled;

31 (6) To be provided, whenever practical, a secure waiting area  
32 during court proceedings that does not require them to be in close  
33 proximity to defendants and families or friends of defendants;

34 (7) To have any stolen or other personal property expeditiously  
35 returned by law enforcement agencies or the superior court when no  
36 longer needed as evidence. When feasible, all such property, except

1 weapons, currency, contraband, property subject to evidentiary  
2 analysis, and property of which ownership is disputed, shall be  
3 photographed and returned to the owner within ten days of being taken;

4 (8) To be provided with appropriate employer intercession services  
5 to ensure that employers of victims, survivors of victims, and  
6 witnesses of crime will cooperate with the criminal justice process in  
7 order to minimize an employee's loss of pay and other benefits  
8 resulting from court appearance;

9 (9) To access to immediate medical assistance and not to be  
10 detained for an unreasonable length of time by a law enforcement agency  
11 before having such assistance administered. However, an employee of  
12 the law enforcement agency may, if necessary, accompany the person to  
13 a medical facility to question the person about the criminal incident  
14 if the questioning does not hinder the administration of medical  
15 assistance;

16 (10) With respect to victims of violent and sex crimes, to have a  
17 crime victim advocate from a crime victim/witness program, or any other  
18 support person of the victim's choosing, present at any prosecutorial  
19 or defense interviews with the victim, and at any judicial proceedings  
20 related to criminal acts committed against the victim. This subsection  
21 applies if practical and if the presence of the crime victim advocate  
22 or support person does not cause any unnecessary delay in the  
23 investigation or prosecution of the case. The role of the crime victim  
24 advocate is to provide emotional support to the crime victim;

25 (11) With respect to victims and survivors of victims, to be  
26 physically present in court during trial, or if subpoenaed to testify,  
27 to be scheduled as early as practical in the proceedings in order to be  
28 physically present during trial after testifying and not to be excluded  
29 solely because they have testified;

30 (12) With respect to victims and survivors of victims, to be  
31 informed by the prosecuting attorney of the date, time, and place of  
32 the trial and of the sentencing hearing for felony convictions upon  
33 request by a victim or survivor;

34 (13) To submit a victim impact statement or report to the court,  
35 with the assistance of the prosecuting attorney if requested, which  
36 shall be included in all presentence reports and permanently included  
37 in the files and records accompanying the offender committed to the  
38 custody of a state agency or institution;

1 (14) With respect to victims and survivors of victims, to present  
2 a statement personally or by representation, at the sentencing hearing  
3 for felony convictions;

4 (15) With respect to victims and survivors of victims, to entry of  
5 an order of restitution by the court in all felony cases, even when the  
6 offender is sentenced to confinement, unless extraordinary  
7 circumstances exist which make restitution inappropriate in the court's  
8 judgment; (~~and~~)

9 (16) With respect to victims and survivors of victims, to present  
10 a statement in person, via audio or videotape, in writing or by  
11 representation at any hearing conducted regarding an application for  
12 pardon or commutation of sentence ; and

13 (17) With respect to victims to have notice of motions, subpoenas,  
14 or other compulsory process for confidential victims' records served on  
15 the prosecuting attorney when the motion is filed or the subpoena is  
16 issued. Confidential victims' records include, but are not limited to,  
17 medical records, counseling records, school records, or other records  
18 protected by state or federal law.

19 **Sec. 3.** RCW 7.69A.030 and 2004 c 120 s 9 are each amended to read  
20 as follows:

21 In addition to the rights of victims and witnesses provided for in  
22 RCW 7.69.030, there shall be every reasonable effort made by law  
23 enforcement agencies, prosecutors, and judges to assure that child  
24 victims and witnesses are afforded the rights enumerated in this  
25 section. Except as provided in RCW 7.69A.050 regarding child victims  
26 or child witnesses of violent crimes, sex crimes, or child abuse, the  
27 enumeration of rights shall not be construed to create substantive  
28 rights and duties, and the application of an enumerated right in an  
29 individual case is subject to the discretion of the law enforcement  
30 agency, prosecutor, or judge. Child victims and witnesses have the  
31 following rights, which apply to any criminal court and/or juvenile  
32 court proceeding:

33 (1) To have explained in language easily understood by the child,  
34 all legal proceedings and/or police investigations in which the child  
35 may be involved.

36 (2) With respect to child victims of sex or violent crimes or child  
37 abuse, to have a crime victim advocate from a crime victim/witness

1 program, or any other support person of the victim's choosing, present  
2 at any prosecutorial or defense interviews with the child victim. This  
3 subsection applies if practical and if the presence of the crime victim  
4 advocate or support person does not cause any unnecessary delay in the  
5 investigation or prosecution of the case. The role of the crime victim  
6 advocate is to provide emotional support to the child victim and to  
7 promote the child's feelings of security and safety.

8 (3) To be provided, whenever possible, a secure waiting area during  
9 court proceedings and to have an advocate or support person remain with  
10 the child prior to and during any court proceedings.

11 (4) To not have the names, addresses, nor photographs of the living  
12 child victim or witness disclosed by any law enforcement agency,  
13 prosecutor's office, or state agency without the permission of the  
14 child victim, child witness, parents, or legal guardians to anyone  
15 except another law enforcement agency, prosecutor, defense counsel, or  
16 private or governmental agency that provides services to the child  
17 victim or witness.

18 (5) To allow an advocate to make recommendations to the prosecuting  
19 attorney about the ability of the child to cooperate with prosecution  
20 and the potential effect of the proceedings on the child.

21 (6) To allow an advocate to provide information to the court  
22 concerning the child's ability to understand the nature of the  
23 proceedings.

24 (7) To be provided information or appropriate referrals to social  
25 service agencies to assist the child and/or the child's family with the  
26 emotional impact of the crime, the subsequent investigation, and  
27 judicial proceedings in which the child is involved.

28 (8) To allow an advocate to be present in court while the child  
29 testifies in order to provide emotional support to the child.

30 (9) To provide information to the court as to the need for the  
31 presence of other supportive persons at the court proceedings while the  
32 child testifies in order to promote the child's feelings of security  
33 and safety.

34 (10) To allow law enforcement agencies the opportunity to enlist  
35 the assistance of other professional personnel such as child protection  
36 services, victim advocates or prosecutorial staff trained in the  
37 interviewing of the child victim.

1           (11) With respect to child victims of violent or sex crimes or  
2 child abuse, to receive either directly or through the child's parent  
3 or guardian if appropriate, at the time of reporting the crime to law  
4 enforcement officials, a written statement of the rights of child  
5 victims as provided in this chapter. The written statement shall  
6 include the name, address, and telephone number of a county or local  
7 crime victim/witness program, if such a crime victim/witness program  
8 exists in the county.

9           (12) With respect to child victims to have notice of motions,  
10 subpoenas, or other compulsory process for confidential victims'  
11 records served on the prosecuting attorney when the motion is filed or  
12 the subpoena is issued. Confidential victims' records include, but are  
13 not limited to, medical records, counseling records, school records, or  
14 other records protected by state or federal law.

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