

2SSB 6017 - S AMD 643
By Senator Dhingra

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that over 500,000
4 women in the United States are at risk of or have undergone female
5 genital mutilation, including 25,000 women and girls in Washington
6 state. The legislature further finds that the Seattle-Tacoma-Bellevue
7 metro is among the five highest rates of impacted and at-risk
8 communities in the United States, making addressing female genital
9 mutilation and other sexual violence critical.

10 It is the intent of the legislature to expand the rights of
11 survivors of sexual assault to survivors of all acts of sexual
12 violence, including female genital mutilation.

13 The legislature declares that protection of victim witnesses in
14 sexual assault and domestic violence cases is a substantial and
15 compelling interest of the state. Sexual assault and domestic
16 violence cases are some of the most difficult cases to prosecute.
17 When sexual assault and domestic violence cases are prosecuted, a
18 victim witness may suffer serious emotional and mental trauma from
19 exposure to the defendant or from testifying in open court. In rare
20 cases, the victim witness is so traumatized that the victim witness
21 is unable to testify at trial and is unavailable as a witness, or the
22 victim witness's ability to communicate in front of the defendant is
23 so reduced that the truth-seeking function of trial is impaired. In
24 other rare cases, the victim witness is able to proceed to trial but
25 suffers long-lasting trauma as a result of testifying in court or in
26 front of the defendant. This trauma is further exacerbated by the
27 distress caused when examined by a pro se defendant. A pro se
28 defendant's examination of the victim of sexual assault or domestic
29 violence continues the psychological trauma inflicted upon the
30 victim. The creation of procedural processes designed to enhance the
31 truth-seeking process and to shield victim witnesses from unnecessary

1 distress so that they may provide testimony is a compelling state
2 interest.

3 The legislature further declares that it intends to protect
4 victim witnesses in sexual assault and domestic violence cases while
5 upholding the rights of defendants under *Faretta v. California*, 422
6 U.S. 806 (1975), the Sixth Amendment to the federal Constitution, and
7 Article I, section 22 of the state Constitution, by applying the
8 balancing test for testimony of children witnesses by closed-circuit
9 television in *State v. Foster*, 135 Wn.2d 441, 957 P.2d 712 (1998) to
10 such victim witnesses. The legislature finds that applying the
11 balancing test in *State v. Foster* when permitting the court to
12 conduct, or appoint the use of standby counsel to conduct, all
13 examination of victim witnesses on behalf of the pro se defendant in
14 sexual assault and domestic violence cases is necessary to further
15 the substantial and compelling state interest in protecting the
16 welfare of the particular victim witness, would assure the
17 reliability of the testimony of such a victim witness, and ensure
18 that a defendant's *Faretta* rights are not infringed.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 7.69 RCW
20 to read as follows:

21 (1)(a) On motion of the prosecuting attorney in any criminal
22 proceeding involving sexual assault or domestic violence in which the
23 defendant is proceeding pro se, whether or not the motion is at the
24 request of the victim witness, the court may appoint standby counsel
25 to conduct, or for a pretrial interview appoint an investigator to
26 conduct, all examination of the victim witness on behalf of the pro
27 se defendant if:

28 (i) The testimony will:

29 (A) Describe an act or attempted act of sexual contact or sexual
30 assault performed with or on the victim witness by another person; or

31 (B) Describe an act or attempted act of domestic violence against
32 the victim witness by another person;

33 (ii) The court finds, in a hearing conducted outside the presence
34 of the jury, that:

35 (A) The victim witness involved would suffer more than de minimis
36 distress associated with testifying or the courtroom generally; and

37 (B) The source of the increased distress would be the anticipated
38 examination by or interaction with the defendant personally;

1 (iii) In cases where a court order prohibiting the defendant from
2 contacting the victim witness is in effect, the court considers the
3 existence of such an order;

4 (iv) The court finds that no less restrictive method of obtaining
5 the testimony exists that can adequately protect the victim witness
6 from suffering distress that was more than de minimis; and

7 (v) When the court appoints standby counsel to conduct, or for a
8 pretrial interview appoints an investigator to conduct, all
9 examination of the victim witness on behalf of the pro se defendant,
10 if appropriate under the applicable evidentiary rules and case law,
11 the standby counsel or investigator asks only those questions
12 submitted or approved by the pro se defendant and the pro se
13 defendant has the opportunity to offer additional questions and have
14 such questions asked. Reasonable court recesses must be granted to
15 facilitate the pro se defendant's ability to meaningfully cross-
16 examine a witness through standby counsel or an investigator.

17 (b) If the court appoints standby counsel or an investigator
18 pursuant to this subsection, the appointment of such standby counsel
19 or investigator shall apply to all pretrial preparation and criminal
20 proceedings including:

- 21 (i) Interviews;
- 22 (ii) Depositions;
- 23 (iii) Pretrial hearings;
- 24 (iv) Trial; and
- 25 (v) Posttrial proceedings.

26 (2) During the hearing conducted under subsection (1) of this
27 section to determine if the court will appoint standby counsel to
28 conduct, or for a pretrial interview appoint an investigator to
29 conduct, all examination of a victim witness on behalf of the pro se
30 defendant, the court may conduct the observation and examination of
31 the victim upon request of the prosecutor. The pro se defendant shall
32 have an opportunity to oppose the prosecutor's motion to have the
33 court appoint standby counsel to conduct, or for a pretrial interview
34 appoint an investigator to conduct, all examination on behalf of the
35 pro se defendant. The defendant's opportunity to cross-examine a
36 victim witness under this subsection shall be limited to the narrow
37 purpose of determining whether the prosecutor's motion shall be
38 granted.

39 (3) The court shall make particularized findings on the record
40 articulating the factors upon which the court based its decision to

1 appoint standby counsel to conduct, or for a pretrial interview
2 appoint an investigator to conduct, all examination of the victim
3 witness on behalf of the pro se defendant pursuant to this section.
4 The court shall determine whether the source of the distress is the
5 anticipated examination by the defendant and may appoint standby
6 counsel to conduct, or for a pretrial interview appoint an
7 investigator to conduct, all examination of the victim witness on
8 behalf of the pro se defendant pursuant to this section. The factors
9 the court may consider include, but are not limited to, consideration
10 of:

11 (a) The victim witness's age, physical health, emotional
12 stability, expressions of fear of being examined in open court by the
13 defendant, and expressions of fear of being examined by the defendant
14 during trial preparation;

15 (b) The relationship of the defendant to the victim witness;

16 (c) The nature of the underlying offense and the traumatization
17 the victim witness will experience from being examined by the
18 defendant;

19 (d) The victim witness's ability to testify in front of the
20 defendant;

21 (e) The distress the victim witness will suffer; and

22 (f) In cases where a court order prohibiting the defendant from
23 contacting the victim witness is in effect, the existence of such an
24 order.

25 (4) Nothing in this section is intended to change a defendant's
26 obligation to abide by a court order restraining the defendant from
27 having any contact with a victim during trial preparation or during
28 trial, whether inside or outside of the courtroom.

29 (5) As used in this section:

30 (a) "Sexual assault" has the same meaning as in RCW 70.125.030.

31 (b) "Sexual contact" has the same meaning as in RCW 9A.44.010.

32 (c) "Domestic violence" has the same meaning as in RCW 10.99.020.

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 7.69 RCW
34 to read as follows:

35 Any minor age 13 years or older may consent to a forensic
36 examination conducted for the purposes of gathering evidence for
37 possible prosecution for domestic violence assault involving nonfatal
38 strangulation.

1 **Sec. 4.** RCW 70.125.030 and 2012 c 29 s 10 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Community sexual assault program" means a community-based
6 social service agency that is qualified to provide and provides core
7 services to victims of sexual assault.

8 (2) "Core services" means those services that are victim-centered
9 community-based advocacy responses to alleviate the impact of sexual
10 assault, as delineated in the Washington state sexual assault
11 services plan of 1995 and its subsequent revisions.

12 (3) "Department" means the department of commerce.

13 (4) "Female genital mutilation" has the same meaning as in RCW
14 9A.36.175.

15 (5) "Law enforcement agencies" means police and sheriff's
16 departments and tribal law enforcement departments or agencies of
17 this state.

18 ~~((5))~~ (6) "Personal representative" means a friend, relative,
19 attorney, or employee or volunteer from a community sexual assault
20 program or specialized treatment service provider.

21 ~~((6))~~ (7) "Services for underserved populations" means
22 culturally relevant victim-centered community-based advocacy
23 responses to alleviate the impact of sexual assault, as delineated in
24 the Washington state sexual assault services plan of 1995 and its
25 subsequent revisions.

26 ~~((7))~~ (8) "Sexual assault" means one or more of the following:

27 (a) Rape or rape of a child;

28 (b) Assault with intent to commit rape or rape of a child;

29 (c) Incest or indecent liberties;

30 (d) Child molestation;

31 (e) Sexual misconduct with a minor;

32 (f) Custodial sexual misconduct;

33 (g) Crimes with a sexual motivation;

34 (h) Sexual exploitation or commercial sex abuse of a minor;

35 (i) Promoting prostitution; or

36 (j) An attempt to commit any of the aforementioned offenses.

37 ~~((8))~~ (9) "Specialized services" means those services intended
38 to alleviate the impact of sexual assault, as delineated in the
39 Washington state sexual assault services plan of 1995 and its
40 subsequent revisions.

1 (~~(9)~~) (10) "Victim" means any person who suffers physical,
2 emotional, financial, and psychological impact as a proximate result
3 of a sexual assault.

4 **Sec. 5.** RCW 70.125.110 and 2025 c 124 s 3 are each amended to
5 read as follows:

6 (1) In addition to all other rights provided in law, a sexual
7 (~~assault~~) violence survivor has the right to:

8 (a) Receive a medical forensic examination at no cost;

9 (b) Receive written notice of the right under (a) of this
10 subsection and that he or she may be eligible for other benefits
11 under the crime victim compensation program, through a form developed
12 by the office of crime victims advocacy, from the medical facility
13 providing the survivor medical treatment relating to the sexual
14 assault;

15 (c) Receive a referral to an accredited community sexual assault
16 program or, in the case of a survivor who is a minor, receive a
17 connection to services in accordance with the county child sexual
18 abuse investigation protocol under RCW 26.44.180, which may include a
19 referral to a children's advocacy center, when presenting at a
20 medical facility for medical treatment relating to the assault and
21 also when reporting the assault to a law enforcement officer;

22 (d) Consult with a sexual (~~assault~~) violence survivor's
23 advocate throughout the investigatory process and prosecution of the
24 survivor's case, including during: Any medical evidentiary
25 examination at a medical facility; any interview by law enforcement
26 officers, prosecuting attorneys, or defense attorneys; and court
27 proceedings, except while providing testimony in a criminal trial, in
28 which case the advocate may be present in the courtroom. Medical
29 facilities, law enforcement officers, prosecuting attorneys, defense
30 attorneys, courts and other applicable criminal justice agencies,
31 including correctional facilities, are responsible for providing
32 advocates access to facilities where necessary to fulfill the
33 requirements under this subsection. The right in this subsection
34 applies regardless of whether a survivor has waived the right in a
35 previous examination or interview;

36 (e) Be informed in writing of policies governing the collection
37 and preservation of a sexual assault kit;

38 (f) Be informed, upon the request of a survivor, of when the
39 forensic analysis of his or her sexual assault kit and other related

1 physical evidence will be or was completed, the results of the
2 forensic analysis, and whether the analysis yielded a DNA profile and
3 match, provided that the disclosure is made at an appropriate time so
4 as to not impede or compromise an ongoing investigation;

5 (g) Upon written request of a survivor, be granted further
6 preservation of his or her sexual assault kit or its probative
7 contents, without charge;

8 (h) Upon written request of a survivor, receive written
9 notification from the appropriate official with custody of his or her
10 sexual assault kit not later than 60 days before the date of the
11 intended destruction or disposal of his or her sexual assault kit;

12 (i) Receive a copy of the police report related to the
13 investigation without charge;

14 (j) Review his or her statement before law enforcement refers a
15 case to the prosecuting attorney;

16 (k) Receive timely notifications from the law enforcement agency
17 and prosecuting attorney as to the status of the investigation and
18 any related prosecution of the survivor's case;

19 (l) Be informed by the law enforcement agency and prosecuting
20 attorney as to the expected and appropriate time frames for receiving
21 responses to the survivor's inquiries regarding the status of the
22 investigation and any related prosecution of the survivor's case; and
23 further, receive responses to the survivor's inquiries in a manner
24 consistent with those time frames;

25 (m) Access interpreter services where necessary to facilitate
26 communication throughout the investigatory process and prosecution of
27 the survivor's case; and

28 (n) Where the sexual (~~assault~~) violence survivor is a minor,
29 have:

30 (i) The prosecutor consider and discuss the survivor's requests
31 for remote video testimony under RCW 9A.44.150 when appropriate; and

32 (ii) The court consider requests from the prosecutor for
33 safeguarding the survivor's feelings of security and safety in the
34 courtroom in order to facilitate the survivor's testimony and
35 participation in the criminal justice process.

36 (2) A sexual (~~assault~~) violence survivor retains all the rights
37 of this section regardless of whether the survivor agrees to
38 participate in the criminal justice system and regardless of whether
39 the survivor agrees to receive a forensic examination to collect
40 evidence.

1 (3) If a survivor is denied any right enumerated in subsection
2 (1) of this section, he or she may seek an order directing compliance
3 by the relevant party or parties by filing a petition in the superior
4 court in the county in which the sexual assault occurred and
5 providing notice of such petition to the relevant party or parties.
6 Compliance with the right is the sole remedy available to the
7 survivor. The court shall expedite consideration of a petition filed
8 under this subsection.

9 (4) Nothing contained in this section may be construed to provide
10 grounds for error in favor of a criminal defendant in a criminal
11 proceeding. Except in the circumstances as provided in subsection (3)
12 of this section, this section does not grant a new cause of action or
13 remedy against the state, its political subdivisions, law enforcement
14 agencies, or prosecuting attorneys. The failure of a person to make a
15 reasonable effort to protect or adhere to the rights enumerated in
16 this section may not result in civil liability against that person.
17 This section does not limit other civil remedies or defenses of the
18 sexual ((~~assault~~)) violence survivor or the offender.

19 (5) For the purposes of this section:

20 (a) "Law enforcement officer" means a general authority
21 Washington peace officer, as defined in RCW 10.93.020, or any person
22 employed by a private police agency at a public school as described
23 in RCW 28A.150.010 or an institution of higher education, as defined
24 in RCW 28B.10.016.

25 (b) "Sexual ((~~assault~~)) violence survivor" means any person who
26 is a victim, as defined in RCW 7.69.020, of sexual assault or female
27 genital mutilation. However, if a victim is incapacitated, deceased,
28 or a minor, sexual ((~~assault~~)) violence survivor also includes any
29 lawful representative of the victim, including a parent, guardian,
30 spouse, or other designated representative, unless the person is an
31 alleged perpetrator or suspect.

32 (c) "Sexual ((~~assault~~)) violence survivor's advocate" means any
33 person who is defined in RCW 5.60.060 as a sexual assault advocate,
34 or a crime victim advocate.

35 NEW SECTION. **Sec. 6.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the
37 remainder of the act or the application of the provision to other
38 persons or circumstances is not affected."

2SSB 6017 - S AMD 643
By Senator Dhingra

1 On page 1, line 2 of the title, after "responses;" strike the
2 remainder of the title and insert "amending RCW 70.125.030 and
3 70.125.110; adding new sections to chapter 7.69 RCW; and creating a
4 new section."

EFFECT: Standardizes and modifies procedures and requirements related to potential appointment of standby counsel or investigators. Removes ability of courts to conduct examination of victim witnesses on behalf of a pro se defendant. Provides that appointment of standby counsel or an investigator shall apply to all pretrial preparation and criminal proceedings. Limits a pro se defendant's cross-examination of a victim witness when opposing a motion for appointment of standby counsel or an investigator to the narrow purpose of determining whether the motion shall be granted. Provides that a defendant's obligation to abide by a court order restraining the defendant from having any contact with a victim during trial preparation or during trial, whether in or outside a courtroom, remains unchanged. Removes the reauthorization of the Sexual Assault Forensic Examination Best Practices Advisory Group.

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